Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission

March, 1992

Provincial Electoral Boundaries Commission

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Provincial Electoral Boundaries Commission

Nova Scotia
Provincial Electoral Boundaries Commission
(March, 1992)

Dr. Ronald G. Landes, Chairperson

Provincial Electoral Boundaries Commission

PO Box 276
Halifax, Nova Scotia
B3J 2N7

902 424-7192
Fax 424 0618

Our file no:

March 6, 1992

The Honourable Ronald S. Russell
Speaker of the Legislative Assembly
of the Province of Nova Scotia
Halifax, Nova Scotia

Dear Mr. Speaker:

Pursuant to Order-in-Council 91-844, we are pleased to submit to you the findings of the Provincial Electoral Boundaries Commission. Entitled, Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission, the Report contains recommendations for consideration by the Legislative Assembly of Nova Scotia.

Dr. Ronald G. Landes,
Chairperson

Dr. Jennifer Smith

The Honourable Mr. C.
Denne Burchell

Ms. Alphonsine Saulnier

Mrs. Carolyn G. Thomas

Mr. Sherman Zwicker

Preface

The extensive work of an electoral redistribution involves the effort, encouragement, and help of many people. To all those who contributed to this process, the Provincial Electoral Boundaries Commission offers its thanks and gratitude. In particular, the Commission wishes to acknowledge those members of the general public who took the time and effort to prepare oral and written submissions. Their views and ideas have contributed greatly to the quality of the final product.

The Provincial Electoral Boundaries Commission also wishes to acknowledge the tremendous effort of its small staff, without whose tireless work a prompt completion of the redistribution would have been impossible: Mrs. Eve Wickwire, Secretary to the Commission and Executive Assistant to the Chairperson; Mrs. Loretta Bell, bilingual clerical secretary; and Mr. Alan Hall, Research and Statistical Officer. The Commission also thanks its legal counsel, Mr. A. William Cox, Q.C., and Dr. Fred Wien of the Maritime School of Social Work.

In addition, the Provincial Electoral Boundaries Commission sincerely thanks the following individuals and organizations for their generous assistance: the Honourable Ronald S. Russell, Speaker of the Nova Scotia House of Assembly; Mr. Arthur R. Donahoe, Q.C., Chairman of the Select Committee on Establishing an Electoral Boundaries Commission; Mr. Warren Bailie, Chief Election Officer of Ontario; Mr. Alan Stewart; Mr. David Small; Mr. Myles Rector; Mr. Dale Robbins; Mr. Bob Fowler; Mr. Arthur G. H. Fordham, Q.C.; Mary Adshade; Harumi Inokuchi; and the Nova Scotia Department of Municipal Affairs (Karen Ramsland, Al Simpson, Mark Poirier).

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Table of Contents

Introduction 1

The Nature of Electoral Redistribution 3

Terms of Reference 12

Analysis of the Terms of Reference 15

The Process of Electoral Redistribution 19

Implementing the Terms of Reference 31

Boundary Recommendations 43

A. Summary of Proposed Constituency Changes 43
B. Boundary Descriptions 50
C. Native Seat Recommendation 79

Implementation of the Report 80

Future Boundary Revisions 81

Appendices 84

A. Order-in-Council 91-844 85

B. Soliciting Public Input 89

(i) newspaper advertisement 89
(ii) contact form 90
(iii) list of presenters (public hearings) 91
(iv) list of written submissions 93

Table of Contents (continued)

C. Legal Opinions Regarding a Native Seat..... 96

(i) Mr. A. William Cox, Q.C., legal counsel to the Provincial Electoral Boundaries Commission..... 96

(ii) Mr. Bruce Wildsmith, legal counsel for the Union of Nova Scotia Indians..... 108

(iii) Response by Mr. A. William Cox, Q.C., to the legal opinion by Mr. Bruce Wildsmith..... 113

(iv) Mr. D. Bruce Clarke, legal counsel for the Native Council of Nova Scotia..... 117

(v) Mr. E. Anthony Ross, legal counsel for the Confederacy of Mainland Mi'kmaqs..... 122

D. Summary of Meeting with the Mi'kmaq Community on February 6-7, 1992..... 129

E. Letter from Dr. Fred Wien..... 145

INTRODUCTION

The drawing of constituency boundaries for the Nova Scotia House of Assembly is a political act with important political consequences. The political implications of redistribution provide the best reason why the process must be nonpartisan. As the first independent boundaries commission in the history of Nova Scotia, created by all-party agreement, the 1992 Provincial Electoral Boundaries Commission is an important milestone in the development of political representation in Nova Scotia.

The Provincial Electoral Boundaries Commission adopted the following procedures to ensure that the process of redistribution would be nonpartisan. First, all contacts with the Commission were considered to be part of the public record. The public hearings held by the Commission were recorded and transcribed, with the transcripts published for archival purposes. Any letters or written submissions to the Commission were also considered part of the public record, again published for archival purposes. Second, individual and/or private submissions or meetings with the Commission as a whole or with individual members of the Commission dealing with the substance of our findings were not allowed. Third, no consideration of the partisan implications of our recommendations was discussed at any time by the Commission, either in the drawing of specific boundaries or in determining the general principles that govern redistribution. Very simply put, party standings and partisan implications were not part of the deliberations of the Provincial Electoral Boundaries Commission.

In seeking a nonpartisan pattern of fair representation for all concerned, the main theme of the Commission's Report is the broadest pattern of community of interest, namely, what is good for the province of Nova Scotia as a whole. The current view of representation held by the average voter and MLA alike is too narrowly focused on particular individual and constituency concerns. Only a broader view of political representation will allow for a fair pattern of constituency boundaries reflecting the diversity of Nova Scotia's political culture. At the same time, within the general concept of Nova Scotia's overall community of interest, particular interests must be recognized as well, namely, the Acadian, Black and Mi'kmaq communities.

THE NATURE OF ELECTORAL REDISTRIBUTION

In carrying out the proposed electoral redistribution, the Provincial Electoral Boundaries Commission had to confront a number of important issues and arrive at an understanding of some key concepts. Since these items serve as the basis of our work, the Commission felt the public should be informed on these matters as well.

The term **electoral redistribution** refers to a redrawing of constituency or riding boundaries for the seats in the legislature. In this case, our mandate was to realign the constituency boundaries for the existing fifty-two seats so as to produce a pattern of "effective representation" for the province as a whole. In seeking a pattern of "effective representation," our mandate instructed us to seek "relative parity of voting power," while taking into account such other considerations as geography, commmunity interests, minority representation, and county boundaries. Thus, the electoral redistribution involves recommendations for changes in the geographic boundaries of the fifty-two seats in the Nova Scotia House of Assembly.

In any electoral redistribution, two key questions are often raised: first, are the political parties and the legislature directly involved in the drawing of the new constituency boundaries and second, are the constituencies of comparable, if not equal, population size?

In British-style parliamentary systems, the traditional pattern used in an electoral redistribution is for the legislature itself to carry out the

process of boundary change. Such a procedure (used in Nova Scotia until 1992 and in Canada federally until 1964) often resulted in charges of **gerrymandering**, that is, the drawing of constituency boundaries for explicit partisan gain. As explained in our opening comments, the Commission, as the first independent boundaries commission in Nova Scotia history, has sought to eliminate gerrymandering as an element in the electoral redistribution process.

The second key issue concerns the population size of each constituency and the relevant concept is that of malapportionment. **Malapportionment** means constituencies that are highly unequal in terms of population. Thus, for example, the existing Sackville riding has about four times as many voters as a number of smaller rural ridings. The result of this malapportionment is that a citizen's vote in Sackville has one-quarter of the potential political influence of a voter in Cumberland Centre. Malapportionment can be reduced if constituencies are created which approach the ideal of population equality.

The history of electoral redistributions in Western liberal democracies demonstrates that the two practices of gerrymandering and malapportionment have often been politically linked. Gerrymandering is often most effective when it is used with an excessive pattern of malapportionment. However, the two processes can be practised separately: one can gerrymander without malapportioning and, conversely, one can malapportion without gerrymandering.

In the American system, for example, a rigid application of the

population equality standard has become the basis for congressional, state, and local electoral redistributions. As a result of a series of American Supreme Court rulings, which began in the early-1960's, strict population equality between constituencies has become the judicially-enforced norm. However, gerrymandering is as blatant as ever, even when constituencies of equal size are produced.

The Canadian view of malapportionment has always been to accept the general idea of population equality for constituencies, tempered by a strong dose of social and political reality; in other words, Canadians accept population equality as a goal, but at the same time recognize the need not to adopt a rigid pattern of population equality. Other factors, such as geography or communtiy interest, can thereby be taken into account. The Canadian attitude is best reflected by the use of ± factors in the electoral redistribution process.

A ± **factor** is the percentage by which a constituency may be either over or under the ideal average of population equality. For example, at the Canadian federal level, a ± factor of 25 percent is utilized for most constituencies. This ± factor means that a constituency may be 25 percent above the average in population size or 25 percent below it. The current pattern in Nova Scotia allows for a ± factor of 33 1/3 percent.

As a rule of thumb, we can say that the greater the ± factor which is allowed, the greater is the resulting pattern of malapportionment. A ± factor produces inequalities far greater than one might expect from a first glance at the issue. For example, if the average-sized constituency

is 12,000 voters and a ± factor of 33 1/3 percent is allowed, the largest constituency could contain 16,000 voters while the smallest constituency could have 8,000 voters. Thus, a ± factor of 33 1/3 percent in this example produces differences in actual constituency size of 100 percent (i.e., 16,000 voters versus 8,000 voters).

The issue of malapportionment came briefly to the forefront of the Canadian political agenda in the spring and summer of 1991. A challenge to an electoral redistribution produced by the Saskatchewan Legislature led to a decision by the Saskatchewan Court of Appeal, which upheld the principle of population equality and thus rejected the proposed redistribution. The immediate implication of the ruling by the Saskatchewan Court of Appeal was that the existing electoral distributions in many provinces, including Nova Scotia, might be open to constitutional challenge. Several provinces, including Nova Scotia, immediately embarked upon new processes of electoral redistribution.

The ruling by the Saskatchewan Court of Appeal was itself appealed to the Supreme Court of Canada. In a landmark ruling on June 6, 1991, the Supreme Court of Canada overturned the previous decision of the Saskatchewan Court of Appeal. The Supreme Court decision, known popularly as the Carter decision, rejected a strict population equality requirement and, instead, held that the goal was "effective representation," to be achieved by "relative parity of voting power."

Writing for the majority, Madame Justice McLachlin outlined clearly the differences between the competing conceptions of "population equality" versus "effective representation" based on "relative parity of

voting power." The following quotations are taken from pages 8-17 of Madame Justice McLachlin's decision; they summarize the opinion of the Supreme Court of Canada on this matter and, together with the terms of reference imposed by the Nova Scotia Legislature, provide the foundation for the work of this Commission.

> The question for resolution on this appeal can be summed up in one sentence: to what extent, if at all, does the right to vote enshrined in the *Charter* permit deviation from the "one person - one vote" rule? The answer to this question turns on what one sees as the purpose of s. 3. Those who start from the premise that the purpose of the section is to guarantee equality of voting power support the view that only minimal deviation from that ideal is possible. Those who start from the premise that the purpose of s. 3 is to guarantee effective representation see the right to vote as comprising many factors, of which equality is but one. The contest, as I see it, is most fundamentally between these two views....
>
> It is my conclusion that the purpose of the right to vote enshrined in s. 3 of the *Charter* is not equality of voting power *per se*, but the right to "effective representation". Ours is a representative democracy. Each citizen is entitled to be represented in government. Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one's grievances and concerns to the attention of one's government representative; as noted in *Dixon v. B.C.(A.G.)*, [1989] 4 W.W.R. 393, at p. 413, elected representatives function in two roles -- legislative and what has been termed the "ombudsman role".
>
> What are the conditions of effective representation? The first is relative parity of voting power. A system which dilutes one citizen's vote unduly as compared with another citizen's vote runs the risk of providing inadequate representation to the citizen whose vote is diluted. The legislative power of the citizen whose vote is diluted will be reduced, as may be access to and assistance from his or her representative. The result will be uneven and unfair representation....
>
> But parity of voting power, though of prime importance, is not the only factor to be taken into account in ensuring effective representation. Sir John A. Macdonald in introducing the *Act to re-adjust the Representation in the House of Commons*, S.C. 1872, c. 13, recognized this fundamental fact:

> ...it will be found that,... while the principle of population was considered to a very great extent, other considerations were also held to have weight; so that different interests, classes and localities should be fairly represented, that the principle of number should not be the only one.

Notwithstanding the fact that the value of a citizen's vote should not be unduly diluted, it is a practical fact that effective representation often cannot be achieved without taking into account countervailing factors.

First, absolute parity is impossible. It is impossible to draw boundary lines which guarantee exactly the same number of voters in each district. Voters die, voters move. Even with the aid of frequent censuses, voter parity is impossible.

Secondly, such relative parity as may be possible of achievement may prove undesirable because it has the effect of detracting from the primary goal of effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. These are but examples of considerations which may justify departure from absolute voter parity in the pursuit of more effective representation; the list is not closed....

In the absence of any supportive evidence to the contrary (as may be found in the United States in the speeches of the founding fathers), it would be wrong to infer that in enshrining the right to vote in our written constitution the intention was to adopt the American model. On the contrary, we should assume that the goal was to recognize the right affirmed in this country since the time of our first Prime Minister, Sir John A. Macdonald, to effective representation in a system which gives due weight to voter parity but admits other considerations where necessary....

In the final analysis, the values and principles animating a free and democratic society are arguably best served by a definition that places effective representation at the heart of the right to vote. The concerns which Dickson C.J. in *Oakes* associated with a free and democratic society -- respect for the inherent dignity of the human person, commitment to social justice and equality, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals in society -- are better met by an electoral system that focuses on effective representation than by one that focuses on mathematical parity. Respect for individual dignity and social equality mandate that citizen's votes not be unduly debased or diluted. But the need to recognize cultural and group identity and to enhance the participation of individuals in the electoral process and society requires that other concerns also be accommodated....

> In summary, I am satisfied that the precepts which govern the interpretation of *Charter* rights support the conclusion that the right to vote should be defined as guaranteeing the right to effective representation. The concept of absolute voter parity does not accord with the development of the right to vote in the Canadian context and does not permit of sufficient flexibility to meet the practical difficulties inherent in representative government in a country such as Canada. In the end, it is the broader concept of effective representation which best serves the interests of a free and democratic society.

Combined with the right to vote in section three of the Canadian Charter of Rights and Freedoms that was adopted in 1982, the Supreme Court decision in the Carter case in 1991 has altered the process of electoral redistributions in Canada in several key ways. First, the idea of "effective representation" has become the overriding goal and it is premised on "relative parity of voting power," as conditioned by factors such as geography and community interests. Second, an electoral redistribution for the provincial legislature is subject to both the Charter and to possible judicial review by the Supreme Court of Canada. Thus, any electoral redistribution produced after June 6, 1991 is constrained by this new context of electoral reform.

In addition to the issues of gerrymandering, malapportionment, and the Supreme Court decision in the Carter case, the Provincial Electoral Boundaries Commission considered it important to discuss and decide on some basic principles to be utilized in the electoral redistribution. The following principles reflect the Commission's attitude toward the general process of an electoral redistribution in Nova Scotia.

1. The primary purpose of political representation is to represent people in the Nova Scotia House of Assembly. Other factors

(e.g., geography, community history, county boundaries) become relevant as they influence and condition the representation of people in the Legislature.

2. Based on the British-style parliamentary system, MLAs represent geographical constituencies, while at the same time representing a broad array of diverse interests in the political community. Legislative representation is not designed simply to reflect the dominant sectoral interests at the time of any particular redistribution. Elected representatives do not serve as a stand in, nor should they so serve, for interest group claims in the legislative process. Each MLA represents not only a particular geographical constituency, but also the community of interest which is Nova Scotia.

3. Geographically-based constituencies should be as compact as possible and contiguous. Noncontiguous constituency boundaries should be avoided, unless a specific and important rationale can be made for such a practice.

4. Misshapen and contrived boundary lines should be avoided whenever possible, because such designations may be assumed by the public to be evidence of the practice of gerrymandering. Natural boundary lines and existing political divisions (municipalities, municipal districts) should be used whenever possible.

5. An electoral redistribution should be nonpartisan and neutral

in its effects on the various political parties.

6. In seeking to encourage more effective representation for the Acadian and Black communities, the Commission felt that a fair and nonpartisan drawing of constituency boundaries would produce acceptable results. While geographic constituencies fairly drawn in areas of minority population concentration will not necessarily guarantee that representatives of the group will be elected to the House of Assembly, they will certainly make such a result much more likely. At a minimum, they will afford to the minority a substantially greater influence upon the electoral result and the quality of their representation.

7. The right to vote in section 3 of the Canadian Charter of Rights and Freedoms cannot be voluntarily given up by voters willing to accept something less than "relative parity of voting power." The fact that particular MLAs might be willing to serve a large number of constituents or that voters in such a constituency do not object to such a situation does not override the rights granted by the Charter.

8. The right to vote concerns the input side of the representative process, namely, the nomination and selection of candidates in the provincial legislature. The output side of the representative's role, what has been called the ombudsman function, can be strengthened by proper support staff rather than by great disparities in the population size of legislative constituencies.

TERMS OF REFERENCE

The composition and specific terms of reference for the Provincial Electoral Boundaries Commission adopted by the Legislature are set out on pages 6-9 of the Report of the Select Committee on Establishing an Electoral Boundaries Commission (July, 1991), as follows:

(a) Composition of Provincial Boundaries Commission

The Committee recommends the Provincial Boundaries Commission be composed as follows:

(a) Professor Ronald G. Landes - Dartmouth, N.S.;
(b) Mr. C. Denne Burchell - Sydney, N.S.;
(c) Ms. Alphonsine Saulnier - Salmon River, Digby Co., N.S.;
(d) Professor Jennifer Smith - Halifax, N.S.;
(e) Mrs. Carolyn Thomas - East Preston, N.S.; and
(f) Mr. Sherman Zwicker - Lunenburg, N.S.

Professor Ronald G. Landes shall be designated chairman of the Commission.

(b) Terms of Reference for Provincial Boundaries Commission

In keeping with the constitutional right to "effective representation", the Committee recommends the following terms of reference for the Provincial Boundaries Commission in determining the province's electoral boundaries:

1. The primary factors to be considered by the Boundaries Commission to ensure "effective representation" are:

(i) of paramount importance, relative parity of voting power achieved through constituencies of equal population to the extent reasonably possible;

(ii) geography;

(iii) community history;

(iv) community interests;

(v) minority representation, including, in particular, representation of the Acadian, Black and Mi'kmaq peoples of Nova Scotia;

(vi) population rate of growth projections.

The Commission is to be guided by the principle that deviations from parity of voting power are only justified on the ground that they contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographic factors within the territory governed.

2. After considering the preceding criteria, county boundaries should be followed where desirable, reflecting the historical use of county lines in delineating Nova Scotia's electoral map.

3. Based on the most recent population statistics available to the Provincial Boundaries Commission, the Commission is to delineate electoral boundaries to achieve a 52-member Legislative Assembly with an additional member to represent the Mi'kmaq people of Nova Scotia.

The Provincial Boundaries Commission is not to be governed by a predetermined population deviation factor or by a predetermined split between urban and rural ridings.

In considering the factor of minority representation, the Commission shall seek out the advice, support and cooperation of, in particular, representatives of the Black, Native and Acadian communities of the Province.

In the case of Native representation, the will of the Legislative Assembly of Nova Scotia to provide for an additional member in the Assembly to represent the Mi'kmaq people is a progressive and unique step, not just in this province, but within Canada and in democracies elsewhere.

To facilitate a full appreciation of the wishes of the Mi'kmaq in Nova Scotia in this regard, the Provincial Boundaries Commission shall undertake a broad and thorough consultation with all native groups, and the native community at large, in this Province, before making its recommendation respecting a Mi'kmaq seat in the Legislature.

In discharging its mandate, the Provincial Boundaries Commission shall conduct such hearings, and hear such representations and consider such other information, at such times and places, as it deems advisable, respecting existing electoral districts and the establishment of new electoral districts in the Province, and the area, name, representation, and implementation of those electoral districts.

(c) Time for Completion of Report of Boundaries Commission

The Committee recommends that the report of the Provincial Boundaries Commission be completed and submitted to the Speaker of the House of Assembly on or before December 31, 1991, or as immediately thereafter as is reasonably possible, but in no case later than in time for consideration of the Commission's recommendations by the Legislature at the Spring sitting of the House of Assembly in 1992.

(d) Periodic Review of Electoral Boundaries

Although it is not within the mandate of the Select Committee to recommend automatic periodic review of the province's electoral boundaries, the Legislature may wish to consider enacting legislation providing for such reviews in order to ensure the Province's electoral boundaries do not become outdated, and possibly in violation of the Constitution, due to periodic population shifts. Many provinces already provide for automatic review after every second general election or every ten years.

ANALYSIS OF THE TERMS OF REFERENCE

The terms of reference quoted in the preceding section direct that a number of factors are to be taken into account by the Provincial Electoral Boundaries Commission in its effort to achieve "effective representation" in Nova Scotia. We have assumed that an order of priority was intended by the House of Assembly in its listing of specific factors to be taken into account. Thus, it has been our interpretation that category one factors (relative parity of voting power, geography, community history, community interests, minority representation, population rate of growth projections) should take precedence over the category two factor of county boundaries. Moreover, item 1(i), relative parity of voting power, should take precedence over all others listed below it within category one (geography community history, community interests, minority representation, population rate of growth projections).

While the term "effective representation" has been left undefined, the factors which affect it have been clearly listed. As the Report of the Select Committee on Establishing an Electoral Boundaries Commission notes, "... of paramount importance [is] relative parity of voting power achieved through constituencies of equal population to the extent reasonably possible." Since "relative parity of voting power" is itself a relative concept, the Commission concluded that it had some leeway in this matter. The extent of that leeway is such that reasonable people may disagree over its application in specific instances. However, one premise is very clear: movement away from "relative parity of voting power"

can only be justified if one or more of the other factors mentioned [1(ii) through 1(vi)] apply and it can be argued that "effective representation" is enhanced by a departure from "relative parity of voting power."

In other words, criteria such as geography or community interest may be used to temper the idea of the "relative parity of voting power," but they do not supplant or eliminate that concept. Factors such as community interests or geography condition but do not cancel the importance of the first criterion, "relative parity of voting power." At the same time, minority group representation might be encouraged by creating somewhat smaller constituencies in terms of voters or population in order to generate more "effective representation" for these groups.

The second category of the Commission's terms of reference concerns the use of county boundaries as possible demarcation lines for political representation. The opening phrase of this second item ("After considering the preceding criteria...") was deemed to be significant by the Commission. County boundaries do not take precedence over the criteria listed in section one of our mandate. Only after the factors listed in section one are dealt with should county boundary lines be used, where possible and appropriate.

The notion that county boundary lines are forever sacrosanct in the drawing of provincial constituency boundaries is one the Commission met head on by assuming that they are not. In the past, when Nova Scotia had a predominantly rural-based population, county boundaries served as useful designations for legislative representation. However, population

shifts and, in particular, urbanization over the last several decades have meant that county boundaries are not always an appropriate basis of effective representation for the populace as a whole.

The Commission considered submissions to the effect that county boundaries coincide with communities of interest. Under such an argument, county boundaries, as a criterion of redistribution, would move from category two to category one. The Commission was suspicious of such an argument and decided to consider it only where an actual coincidence was established.

The above arguments do not mean that the Provincial Electoral Boundaries Commission sought to eliminate county boundaries as the basis of representation just for the sake of doing so. However, the Commission was of the view that the point of political representation is to represent people, not land. The Canadian Charter of Rights and Freedom (section three) is concerned with the rights of people, not administrative units. Thus, the Commission sought to utilize county boundary lines whenever it could, while at the same time implementing the primary goal of "relative parity of voting power."

The third category of the Commission's terms of reference concerns the number of seats in the provincial legislature. The Commission was instructed to retain the current number of 52 seats and to add one member to represent the Mi'kmaq people in Nova Scotia. Thus, the size of the Legislative Assembly would be increased by one seat to 53. The Commission thus concluded that it had no license to consider any other

composition of the House of Assembly.

Following the three specific categories of our terms of reference, the House of Assembly then instructed the Commission on other relevant points to consider. One of these, in particular, needs comment: "The Provincial Boundaries Commission is not to be governed by a predetermined population deviation factor or by a predetermined split between urban and rural ridings." The Commission interpreted this instruction to mean that the House of Assembly was not imposing any specific ± factor or rural/urban split, but at the same time was not prohibiting the application of such differentiating factors in appropriate circumstances.

Item (c) of the Commission's mandate related to the time for completion of the Report. Given the need to hold public hearings and to do a thorough review of existing boundaries, the Commission concluded, early in its deliberations, that the initial optimistic deadline of December 31, 1991 could not be met. The Commission, therefore, aimed to meet the backup deadline granted to it, that being the Spring sitting of the House of Assembly. The Commission selected March 1, 1992 as the tentative deadline for the submission of its Report.

Item (d) of the Commission's terms of reference raises the possibility of dealing with the need for a periodic review of electoral boundaries in the province of Nova Scotia. Having gone through the review process, the Provincial Electoral Boundaries Commission thought it might prove useful to comment on this matter.

THE PROCESS OF ELECTORAL REDISTRIBUTION

The Provincial Electoral Boundaries Commission initiated the electoral redistribution process with a period of public consultation from October 7 through November 26, 1991. In addition to oral submissions involving 121 people at public hearings (see Appendix B(iii)), the Commission received about 100 written submissions from individuals and groups, totalling over 800 pages of text (see Appendix B(iv)).

After completion of the public consultation process (November 30, 1991), the Commission spent several weeks reviewing the public hearing transcripts and written submissions. It should be stressed that no decisions regarding the specifics of the redistribution process were made until the public consultation process had been completed and the written submissions reviewed. This procedure was adopted by the Commission to ensure that the public's input was reflected in our decisions and final recommendations. Wherever possible and appropriate, the Commission attempted to incorporate the ideas and proposals presented to it from the public.

The initial decisions regarding the specifics of the redistribution process were taken by the Provincial Electoral Boundaries Commission at its meeting on December 16-17, 1991. The broad pattern of the redistribution, as well as the process of seat allocation, were decided. Based on these decisions, the Commission's research and statistical officer, Mr. Alan Hall, working closely with the Commission chairperson, Dr. Ronald G. Landes, and in consultation with the other Commission members, prepared specific proposals, which were considered in detail by

the Commission at its meeting of January 27, 1992.

At its December, 1991 meeting, the first question faced by the Commission was the data base to be utilized. The Commission considered the relative merits of using population statistics as opposed to voters' lists, and concluded that it was obliged to use population by its Terms of Reference (b(3)). Based on information provided by Statistics Canada, it was clear that the 1991 Canadian census figures would not be available in time for the Commission's use. Moreover, the lack of existing poll maps for use with the 1988 provincial enumeration meant that the Commission would have difficulty using the 1988 figures as the basis of the redistribution. In handling this problem of arriving at an adequate data base, the Commission decided to use the following data and procedures.

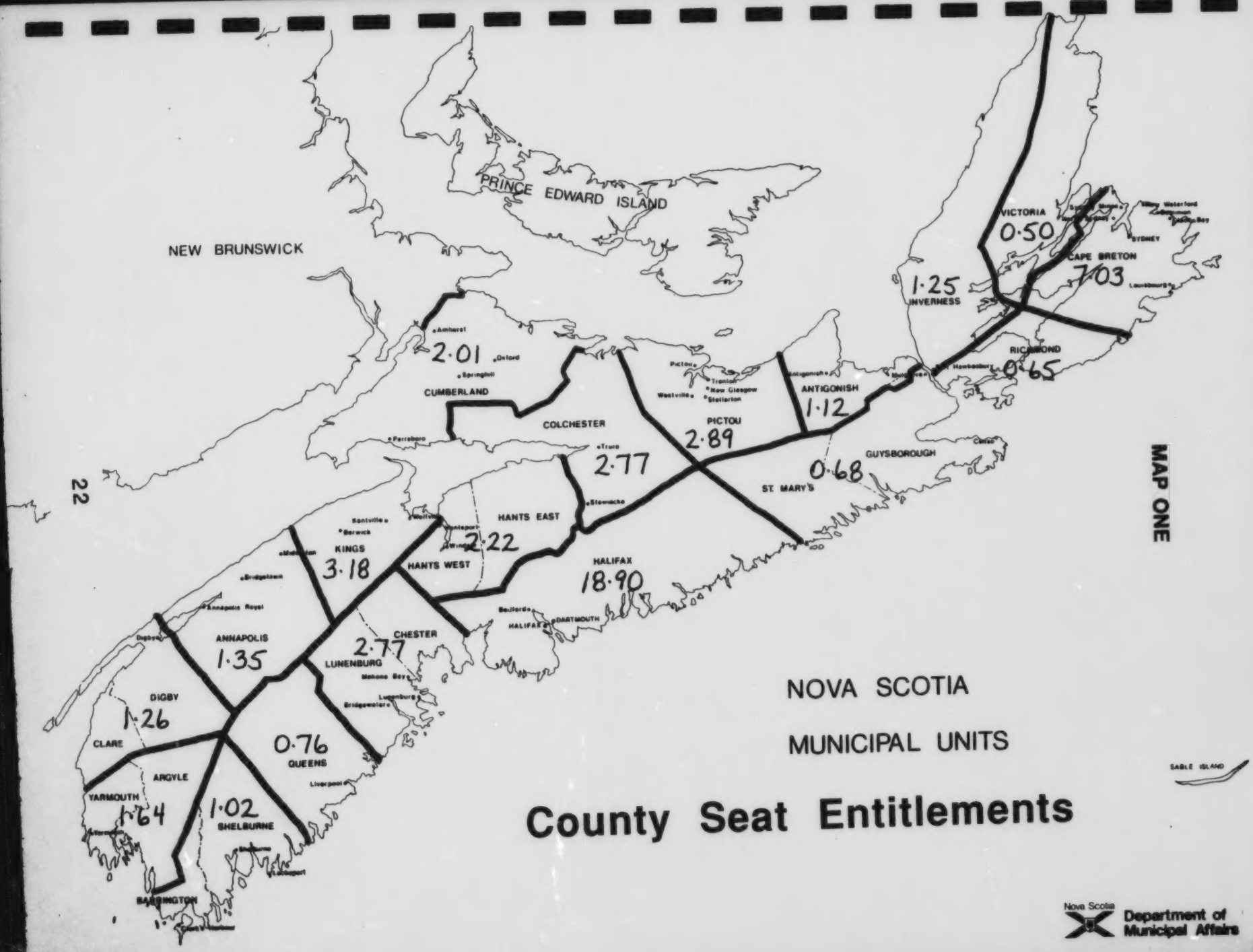
The most current population figures for Nova Scotia are the June 1, 1991 county estimates released by Statistics Canada on December 10, 1991. These figures (see Table One and Map One) are projections derived from the 1986 census and should not be confused with the 1991 census. However, such projections by Statistics Canada have proven to be quite accurate in the past and provide the most up-to-date figures available. These numbers give Nova Scotia a population of 899,900 with an average of 17,300 for 52 electoral districts. In comparison with the 1986 census, the population of the province went up 6,100 outside of Halifax County (+1.1%) and grew by 20,600 inside Halifax County (+6.7%). Unfortunately, separate estimates are not available for municipalities or smaller areas.

To comply with the Terms of Reference to use the most recent population statistics available, the Commission decided to use the June

TABLE ONE: COUNTY POPULATION ESTIMATES
(June 1, 1991)

County	Estimated Population - 1991	Current Number of Seats	1991 Seat Entitlement
Halifax	327,000	14	18.90
Cape Breton	121,700	7	7.03
Kings	55,000	3	3.18
Pictou	50,000	3	2.89
Colchester	48,000	3	2.77
Lunenburg	47,900	3	2.77
Hants	38,400	2	2.22
Cumberland	34,700	3	2.01
Yarmouth	28,400	2	1.64
Annapolis	23,400	2	1.35
Digby	21,800	2	1.26
Inverness	21,600	2	1.25
Antigonish	19,400	1	1.12
Shelburne	17,600	1	1.02
Queens	13,200	1	0.76
Guysborough	11,800	1	0.68
Richmond	11,300	1	0.65
Victoria	8,700	1	0.50
Nova Scotia	899,900	52	52

Source: Statistics Canada (December 10, 1991)


PRINCE EDWARD ISLAND
NEW BRUNSWICK
VICTORIA
0·50
CAPE BRETON
7·03
1·25
INVERNESS
RICHMOND
0·65
ANTIGONISH
1·12
2·01
CUMBERLAND
COLCHESTER
2·77
PICTOU
2·89
GUYSBOROUGH
0·68
ST. MARY'S
HANTS EAST
2·22
KINGS
3·18
HANTS WEST
HALIFAX
18·90
ANNAPOLIS
1·35
CHESTER
2·77
LUNENBURG
DIGBY
1·26
CLARE
0·76
QUEENS
ARGYLE
YARMOUTH
1·64
1·02
SHELBURNE
BARRINGTON
22
MAP ONE
NOVA SCOTIA
MUNICIPAL UNITS
SABLE ISLAND
County Seat Entitlements
Nova Scotia
Department of Municipal Affairs

1991 population estimates as the basis for allocating seats among counties and various regions in the province. The fourth column in Table One ("1991 Seat Entitlement") shows the number of seats each county would receive in the Legislature based on absolute population equality. On the basis of these estimates, the Commission decided to eliminate seats in Cumberland, Inverness and Annapolis Counties and to add three seats to Halifax County.

Having made the broad allocation of seats based on the 1991 county estimates, the Commission needed a method to calculate population figures for its more detailed decisions. In order to provide a usable and effective way of allocating seats and deciding on various boundary proposals, the Commission developed and used an **entitlement system**. This system is based on the idea that a county (or any other geographic area) having a population of 17,300 (1991 estimate) is entitled to one seat in the Nova Scotia House of Assembly. Colchester County, with an estimated population of 48,000, has an entitlement of 2.77 seats, while Richmond County (est. pop. 11,300) has an entitlement of 0.65 seats. The entitlement system allows for easy comparisons and avoids the need to use either cumbersome population or voter figures. This system is also useful in determining how far above or below the provincial average a riding is. A riding with an entitlement of 1.12 is 12% above the provincial average, while one with an entitlement of 0.66 is 34% below.

While population estimates for towns and municipalities are not available, they can be approximated using this entitlement system. A town which contains 20% of a county's population (based on the 1986

census) would receive 20% of that county's seat entitlement. For example, since Clare had a population of 9,740 at the 1986 census and the County of Digby had a 1986 census population of 21,852 and a 1991 seat entitlement of 1.26, Clare's seat entitlement would be:

$$9{,}740 \div 21{,}852 \times 1.26 = 0.56$$

This procedure can be repeated for every area of the province, whether it is a town, rural municipality, municipal district or even just an enumeration area. Outside of Halifax County, seat entitlements within individual counties were made on the basis of the 1986 census figures. For Halifax County, the 1991 municipal enumeration figures were utilized. This different procedure in Halifax County was adopted in order to use the most recent population figures available in the area of highest population growth and internal migration. It is important to understand that this different procedure had no effect on the overall entitlement of Halifax County in relation to the entitlements of the other counties of the province. It is possible to use the entitlement system to compare populations of any two areas of the province even while using different sets of numbers. This proved useful in proposing districts which crossed county boundaries.

Seat entitlements for each county, municipality and census area are presented in Table Two. Annapolis County would be entitled to approximately one and a third representatives in the House of Assembly, while the Town of Annapolis Royal would have enough people to comprise 4% of a legislative seat. Census subdivision Annapolis A (roughly the area surrounding the Annapolis Basin and lower Annapolis River, excluding Annapolis Royal) would be entitled to almost half a seat. For the County of

TABLE TWO: SEAT ENTITLEMENTS FOR MAJOR POPULATION CENTRES, PROVINCE OF NOVA SCOTIA

Annapolis County	**1.35**
Annapolis Royal	0.04
Annapolis A	0.49
Annapolis B	0.24
Annapolis C	0.26
Annapolis D	0.15
Bridgetown	0.06
Middleton	0.10
Antigonish County	**1.12**
Antigonish Town	0.32
Antigonish A	0.40
Antigonish B	0.39
Cape Breton County	**7.03**
Cape Breton A	1.01
Cape Breton B	1.40
Cape Breton C	0.16
Dominion	0.16
Glace Bay	1.16
Louisbourg	0.08
New Waterford	0.47
North Sydney	0.43
Sydney	1.58
Sydney Mines	0.46
Colchester County	**2.77**
Colchester A	0.22
Colchester B	0.99
Colchester C	0.71
Stewiacke	0.08
Truro	0.75
Cumberland County	**2.01**
Amherst	0.56
Cumberland A	0.18
Cumberland B	0.26
Cumberland C	0.28
Cumberland D	0.28
Oxford	0.08
Parrsboro	0.10
Springhill	0.27
Digby County	**1.26**
Clare	0.56
Digby MD	0.55
Digby Town	0.15
Guysborough County	**0.68**
Canso	0.07
Guysborough MD	0.39
Mulgrave	0.06
St. Mary's	0.17
Halifax County	**18.90**
Bedford	0.65
Dartmouth	3.97
Halifax City	6.67
Halifax A	0.59
Halifax B	0.87
Halifax C	2.76
Halifax D	1.72
Halifax E	1.06
Halifax F	0.31
Halifax G	0.28
Halifax H	0.00

TABLE TWO (continued)

County of Halifax Municipality	
District 1	0.20
District 2	0.32
District 3	0.29
District 4	0.42
District 5	0.36
District 6	0.46
District 7	0.26
District 8	0.36
District 9	0.41
District 10	0.27
District 11	0.24
District 12	0.14
District 13	0.15
District 14	0.20
District 15	0.31
District 16	0.33
District 17	0.38
District 18	0.23
District 19	0.32
District 20	0.36
District 21	0.26
District 22	0.32
District 23	0.31
District 24	0.33
District 25	0.37
Hants County	**2.22**
East Hants	1.06
Hantsport	0.08
West Hants	0.81
Windsor	0.22
Inverness County	**1.25**
Inverness A	0.40
Inverness B	0.37
Inverness C	0.24
Port Hawkesbury	0.22
Kings County	**3.18**
Berwick	0.12
Kentville	0.31
Kings A	1.20
Kings B	0.63
Kings C	0.41
Kings D	0.30
Wolfville	0.20
Lunenburg County	**2.77**
Bridgewater	0.39
Chester	0.63
Lunenburg MD	1.50
Lunenburg Town	0.18
Mahone Bay	0.07
Pictou County	**2.89**
New Glasgow	0.58
Pictou Town	0.26
Pictou A	0.38
Pictou B	0.37
Pictou C	0.55
Stellarton	0.31
Trenton	0.18
Westville	0.25
Queens County	**0.76**
Liverpool	0.19
Queens A	0.19
Queens B	0.38

TABLE TWO (continued)

Richmond County	**0.65**
Richmond A	0.26
Richmond B	0.13
Richmond C	0.26
Shelburne County	**1.02**
Barrington	0.45
Clark's Harbour	0.06
Lockeport	0.05
Shelburne MD	0.31
Shelburne Town	0.13
Victoria County	**0.50**
Victoria A	0.22
Victoria B	0.26
Yarmouth County	**1.64**
Argyle	0.55
Yarmouth MD	0.63
Yarmouth Town	0.46

Note: Where a town and a municipal district have the same name, the word "Town" or abbreviation "MD" appears after the name. Since an entitlement of 1.00 represents approximately 17,300 people, an area with fewer than 86 people (e.g., Halifax H [Sable Island]) has an entitlement of 0.00, rounded to two decimal places.

Halifax, both the census data and municipal district data are given.

Having decided its data base (Canadian census data) and its procedure for utilizing that data base (the entitlement system), the Provincial Electoral Boundaries Commission then was faced with the question of whether or not any areas or counties should be protected before specific seat allocations were made. The concept of a **protected constituency** refers to creating constituencies that might differ substantially from the concept of relative parity of voting power, due to such factors as geography, community history, community interests and minority representation.

The Provincial Electoral Boundaries Commission concluded that a fair and nonpartisan drawing of constituency boundary lines, based around areas of minority group population concentration, was the best method for encouraging the effective representation of such groups in the Nova Scotia House of Assembly. Thus, there are no specifically-designated Acadian seats, nor is there a specifically-designated Black seat. Instead, boundary lines are recommended that encourage, but do not guarantee, minority group representatives in the House of Assembly. The seat entitlement or population size for such protected constituencies would be less than that for the ideal average-sized constituency.

The first protected seat considered was one designed to promote more effective representation of the Black community in the Legislature. The Commission concluded that this proposed seat should consolidate the Black communities in the Preston area within one provincial constituency and that its territorial base should be approximately that of the municipal

districts 7 and 8. The population size should be from one-half to two-thirds of an average-sized seat, with a Black population concentration of between 25 to 35 percent of the total constituency.

The next question confronted by the Commission was how to promote the effective representation of the Acadian community in the House of Assembly. Given the population concentration, as well as the dispersion of the Acadian community, the Commission decided to retain unchanged the existing constituencies of Clare, Richmond, and Argyle. These constituencies are not designated-Acadian seats, but, given the population patterns in these ridings, maintaining the existing boundaries will encourage, but not guarantee, Acadian representatives in the Nova Scotia House of Assembly.

Having encouraged representation of the Black community by creating a new seat based in the Preston area and maintaining the existing constituency boundaries in Clare, Richmond, and Argyle in order to promote effective Acadian representation, the Commission then considered whether or not any other exceptions to "relative parity of voting power" might be desirable. On geographical grounds, the Commission decided to protect Victoria county, but modified to include the northern part of the current constituency of Inverness North.

The decision to create a new seat in the Preston area, to retain unchanged the existing ridings of Clare, Richmond, and Argyle, and to protect a slightly-modified Victoria county seat meant that the entitlements for all other areas would have to be adjusted. The concept of

an **adjusted entitlement** means that the population of the protected ridings has been excluded from the calculation of the entitlement system. An adjusted entitlement refers to the seats allocated on population equality among the 47 remaining constituencies (52 seats - 5 protected ridings = 47 seats). The adjusted entitlement for an average-sized constituency of the 47 unprotected ridings was about five percent greater than an entitlement of population equality based on fifty-two constituencies. This means that an average unprotected riding would represent approximately 18,100 people rather than the 17,300 under absolute population equality.

In addition to the five protected ridings from among the existing 52 constituencies, the Provincial Electoral Boundaries Commission also had to deal with the proposed new seat for the Mi'kmaq community. While awaiting a proposal from the native community on this matter, the Commission had to proceed with the balance of the redistribution process.

IMPLEMENTING THE TERMS OF REFERENCE

As noted earlier, one of the tasks of the Provincial Electoral Boundaries Commission was to undertake a broad process of public consultation before any decisions were made regarding the details of the proposed electoral redistribution. To that end, the Commission determined that the appropriate way to proceed was to hold a series of public hearings throughout the province (see Appendix (Bi)). A total of 17 days of public hearings were held between October 7 and November 26, 1991. Because of public demand, an additional afternoon session was scheduled in Meteghan.

In order to encourage participation by members and groups from the Black community, the Commission held hearings at the Black Cultural Centre and at the Halifax North Branch Library. As commented on by several presenters at the Black Cultural Centre, the Commission hearings there marked the first time that any such Commission had ever consulted with the Black community at their own venue.

In order to encourage participation by members and groups of the Acadian community, the Commission held hearings in Meteghan, Yarmouth, Port Hawkesbury, and Halifax. A total of five Commission sessions were bilingual, with these sessions chaired by the Commission's bilingual member, Ms. Alphonsine Saulnier. Moreover, the staff of the Commission (Mrs. Loretta Bell, bilingual clerical secretary and Mrs. Eve Wickwire, Commission secretary) are both bilingual. Members of the public could submit oral and written presentations to the Commission in either official language.

In accordance with the Commission's Terms of Reference, a somewhat different pattern of public consultation was adopted by the Commission to facilitate the involvement of the Mi'kmaq community (see Appendix D). Background discussions were held with members of the aboriginal community, including an all-day session on January 15, 1992. The Commission, in trying to educate itself in this area, also received expert testimony from several academics at its meeting of September 10, 1991 and heard a two-hour presentation on January 27, 1992 by Mr. Don Julien on the history of the Mi'kmaq people in Nova Scotia.

At the request of members of the Mi'kmaq community, the Commission decided to help sponsor a meeting that would bring various members of the aboriginal community together to discuss how the proposed new seat for the Mi'kmaq community might be implemented. The meeting of the Mi'kmaq community was held in Truro on February 6 and 7, 1992. Although partly sponsored by the Commission, the Truro meeting was an internal meeting of the Mi'kmaq community designed to develop their own ideas and concerns regarding the proposed seat in the Nova Scotia House of Assembly. The meeting in Truro produced a Report to the Commission, written by Mr. Noel Doucette and Dr. Fred Wien (see Appendix D). On the basis of this consultation process, the Commission made its recommendations regarding the proposed native seat.

Following the public consultation process, the Commission developed proposals consistent with its Terms of Reference. In seeking a pattern of "effective representation" based on "relative parity of voting power," the Commission has suggested boundaries which greatly reduce

population inequalities (i.e., malapportionment) among the various constituencies. In Table 3 and Table 4, the Commission presents its adjusted entitlement figures and estimated population figures for the proposed electoral redistribution.

Under the Commission's proposed scheme and with the exception of the five protected ridings, forty-five of the forty-seven remaining constituencies fall within a ± factor of 15 percent of the adjusted provincial average. Only the ridings of Pictou West (-16 percent) and Queens (-27 percent) fall outside of the ± factor of 15 percent. Thus, the population inequalities between constituencies are greatly reduced by the Commission's proposed redistribution. Factors of geography, community history, and community interests influenced the drawing of the specific boundaries within the general redistribution process.

Minority representation will be enhanced by the creation of a new seat based in Preston and the retention of the current constituency boundaries in Clare, Richmond, and Argyle. The Preston seat will encourage, but not guarantee, Black representation in the House of Assembly. Similarly, the constituency boundaries for Clare, Richmond, and Argyle will encourage, but not guarantee, Acadian representation in the Legislature.

At the request of the Mi'kmaq community, no recommendation as to how a native seat should be constituted is being made at this time.

The proposed seats created to encourage minority representation in

TABLE THREE: ENTITLEMENT OF PROPOSED RIDINGS

(by constituency size)

	Proposed Riding	Entitlement	Adjusted Entitlement	Estimated Population
1	Halifax Atlantic	1.20	1.14	20,700
2	Dartmouth South	1.20	1.14	20,700
3	Halifax Fairview	1.19	1.13	20,500
4	Halifax Bedford Basin	1.18	1.13	20,400
5	Bedford-Fall River	1.17	1.11	20,200
6	Cape Breton East	1.16	1.11	20,100
7	Halifax Citadel	1.16	1.11	20,100
8	Halifax Chebucto	1.16	1.11	20,100
9	Halifax Needham	1.14	1.09	19,800
10	Truro-Bible Hill	1.14	1.09	19,700
11	Dartmouth North	1.14	1.09	19,700
12	Antigonish	1.13	1.08	19,600
13	Cole Harbour-Eastern Passage	1.13	1.08	19,500
14	Sackville-Cobequid	1.12	1.07	19,400
15	Hants West	1.12	1.07	19,300
16	Hants East	1.10	1.05	19,100
17	Kings South	1.10	1.05	19,100
18	Yarmouth	1.09	1.04	18,900
19	Cape Breton South	1.08	1.04	18,800
20	Lunenburg West	1.07	1.02	18,500
21	Pictou Centre	1.07	1.02	18,400
22	Lunenburg	1.05	1.00	18,200
23	Cumberland North	1.04	1.00	18,100
24	Kings West	1.04	0.99	18,000
25	Kings North	1.04	0.99	18,000
26	Cape Breton North	1.04	0.99	17,900
27	Dartmouth East	1.04	0.99	17,900
28	Annapolis	1.03	0.99	17,900
29	Dartmouth-Cole Harbour	1.03	0.99	17,900
30	Shelburne	1.02	0.97	17,600
31	Digby-Annapolis Royal	1.02	0.97	17,600
32	Chester-St. Margaret's	1.01	0.97	17,500

TABLE THREE (continued)

	Proposed Riding	Entitlement	Adjusted Entitlement	Estimated Population
33	Inverness	0.99	0.94	17,000
34	Sackville-Beaverbank	0.98	0.93	16,900
35	Colchester-Musquodoboit Valley	0.97	0.93	16,800
36	Cape Breton The Lakes	0.97	0.92	16,700
37	Cape Breton Centre	0.96	0.92	16,700
38	Cumberland South	0.96	0.92	16,600
39	Timberlea-Prospect	0.96	0.91	16,600
40	Colchester North	0.95	0.91	16,500
41	Eastern Shore	0.95	0.91	16,500
42	Pictou East	0.95	0.90	16,400
43	Cape Breton Nova	0.92	0.88	15,900
44	Guysborough-Port Hawkesbury	0.91	0.87	15,800
45	Cape Breton West	0.90	0.86	15,600
46	Pictou West	0.88	0.84	15,200
47	Queens	0.76	0.73	13,200
48	Richmond	0.65		11,300
49	Clare	0.56		9,700
50	Argyle	0.55		9,500
51	Victoria	0.52		9,000
52	Preston	0.50		8,700
	Total	52.00	47.00	899,900
	Average		1.05	17,300

TABLE FOUR: ENTITLEMENT OF PROPOSED RIDINGS
(by alphabetical order)

	Proposed Riding	Entitlement	Adjusted Entitlement	Estimated Population
1	Annapolis	1.03	0.99	17,900
2	Antigonish	1.13	1.08	19,600
3	Argyle	0.55		9,500
4	Bedford-Fall River	1.17	1.11	20,200
5	Cape Breton Centre	0.96	0.92	16,700
6	Cape Breton East	1.16	1.11	20,100
7	Cape Breton North	1.04	0.99	17,900
8	Cape Breton Nova	0.92	0.88	15,900
9	Cape Breton South	1.08	1.04	18,800
10	Cape Breton The Lakes	0.97	0.92	16,700
11	Cape Breton West	0.90	0.86	15,600
12	Chester-St. Margaret's	1.01	0.97	17,500
13	Clare	0.56		9,700
14	Colchester-Musquodoboit Valley	0.97	0.93	16,800
15	Colchester North	0.95	0.91	16,500
16	Cole Harbour-Eastern Passage	1.13	1.08	19,500
17	Cumberland North	1.04	1.00	18,100
18	Cumberland South	0.96	0.92	16,600
19	Dartmouth-Cole Harbour	1.03	0.99	17,900
20	Dartmouth East	1.04	0.99	17,900
21	Dartmouth North	1.14	1.09	19,700
22	Dartmouth South	1.20	1.14	20,700
23	Digby-Annapolis Royal	1.02	0.97	17,600
24	Eastern Shore	0.95	0.91	16,500
25	Guysborough-Port Hawkesbury	0.91	0.87	15,800
26	Halifax Atlantic	1.20	1.14	20,700
27	Halifax Bedford Basin	1.18	1.13	20,400
28	Halifax Chebucto	1.16	1.11	20,100
29	Halifax Citadel	1.16	1.11	20,100
30	Halifax Fairview	1.19	1.13	20,500
31	Halifax Needham	1.14	1.09	19,800
32	Hants East	1.10	1.05	19,100
33	Hants West	1.12	1.07	19,300
34	Inverness	0.99	0.94	17,000

TABLE FOUR (continued)

	Proposed Riding	Entitlement	Adjusted Entitlement	Estimated Population
35	Kings North	1.04	0.99	18,000
36	Kings South	1.10	1.05	19,100
37	Kings West	1.04	0.99	18,000
38	Lunenburg	1.05	1.00	18,200
39	Lunenburg West	1.07	1.02	18,500
40	Pictou Centre	1.07	1.02	18,400
41	Pictou East	0.95	0.90	16,400
42	Pictou West	0.88	0.84	15,200
43	Preston	0.50		8,700
44	Queens	0.76	0.73	13,200
45	Richmond	0.65		11,300
46	Sackville-Beaverbank	0.98	0.93	16,900
47	Sackville-Cobequid	1.12	1.07	19,400
48	Shelburne	1.02	0.97	17,600
49	Timberlea-Prospect	0.96	0.91	16,600
50	Truro-Bible Hill	1.14	1.09	19,700
51	Victoria	0.52		9,000
52	Yarmouth	1.09	1.04	18,900
	Total	52.00	47.00	899,900
	Average		1.05	17,300

the House of Assembly are all smaller than the average size of ideal constituencies. On this point the Commission would refer back to Nova Scotia's community of interest, in that minorities have a greater need for political representation than the majority, which will predominate no matter what pattern of constituencies is recommended. In political terms, however, the overrepresentation of minorities has to be tempered by a realization that the majority has legitimate rights and demands for political representation as well. As usual, the tradeoff between minority rights and majority rule is a judgmental one that must be tempered by understanding and respect by and for all members of the political community.

At the same time that the Commission is creating seats to encourage effective representation for the indicated minority groups, it is necessary to recognize that the demands for sectoral representation are directly linked to the failure of the political parties to perform adequately their representative function by reflecting the current diversity of Nova Scotia's political culture. The political parties must reach out in a truly representative way in the recruitment and nomination of candidates for the provincial legislature. No pattern of constituency boundaries can provide such a result for the political parties - they must do it themselves.

The terms of reference indicated that "population rate of growth projections" (item 1(vi)) also be taken into account by the Commission. Given the unavailability of the 1991 census for our work, this was a difficult goal to reach. Population growth was handled in two different

ways. First, because most of the population growth in the province centred on Halifax County (see Table One), we used the 1991 municipal enumeration for the projections and decisions in this area. This procedure allowed the Commission to account for shifts in the Metropolitan area that have occurred since the 1986 federal census. Second, the oral and written submissions made to the Commission were particularly useful in this regard. Many submissions assisted in the identification of high growth areas within existing constituencies.

Given these concerns, the Commission attempted, where possible, to make potential high growth constituencies somewhat smaller in size than ridings which had a stable or apparent slow growth pattern. For example, the proposed Dartmouth South constituency has a greater population base than either Dartmouth North or Dartmouth East, two constituencies which are likely to see an expanding population over the next few years. Similarly, the proposed riding of Sackville-Beaverbank is smaller in population than Sackville-Cobequid, while both Sackville ridings are smaller than the old-growth areas in the Metropolitan area.

In implementing the above category one factors, the Commission also remained cognizant of the category two factor of county boundaries. Even though the population disparities between constituencies have been considerably reduced, the Commission has been able to retain most county boundary lines as constituency boundaries. Wherever possible, a redistribution of population was accomplished within county lines (Kings County, Pictou County, Cape Breton County). County boundary lines, however, had to be crossed in the creation of the following proposed

constituencies: Digby-Annapolis Royal, Colchester-Musquodoboit Valley, Chester-St. Margaret's, Guysborough-Port Hawkesbury, and Victoria.

In seeking to take into account all of the various factors delineated in our Terms of Reference, the Commission did not adopt any specific ± factor. For example, at our Wolfville meeting in December, we decided to aim for a ± factor of 25 percent, if possible. However, the figure of 25 percent was not a hard-and-fast rule, but a general guideline or rule-of-thumb. The Commission hoped to be able to produce an electoral redistribution with a smaller ± factor, which it eventually was able to achieve. Even so, while most of the proposed constituencies fall within the range of a ± factor of 15 percent, again this was not a rigid standard adopted by the Commission.

With respect to a possible rural-urban division, the Commission decided not to set any number of specific rural or urban ridings, nor to make any specific decision with respect to the ideal size of either type. Instead, the Commission agreed generally that, where possible, rural ridings would be under the constituency average and urban ridings over the provincial average. Thus, urban ridings (see Table Three) are generally the largest ridings in terms of their adjusted entitlements, while rural ridings are typically smaller in this regard.

During the course of the public hearings, the Commission heard many presentations that suggested that the role of a rural MLA is often times very different from that of an urban MLA. Because of problems of communication, differences with respect to the number of policy areas to

be dealt with, ability to travel to and around the constituency, and a greater "ombudsman's" role, a rural MLA faces enhanced difficulties in providing "effective representation" for his or her constituents.

The ombudsman or representative role for all MLAs and especially for rural members is an important element in establishing a pattern of effective legislative representation. The differences between rural and urban MLAs have been recognized, in part, by the Commission's decision to have smaller-sized rural constituencies. However, the problem of effective representation concerns not just rural members. All members (rural, urban, or suburban) face increased difficulties in carrying out their tasks.

A common theme of many of the submissions was that the support services given to MLAs, particularly those in the rural areas, are inadequate. Although the province is undergoing a period of financial restraint, there is reason to recommend increased government expenditures in order to ensure effective representation in the House of Assembly. Thus, the Commission hereby recommends that the House of Assembly review the current level of support services for all MLAs, particularly for rural MLAs with large geographical constituencies. Increased funding for constituency services, as well as paid staff, might be deemed appropriate.

A good example of the special needs of rural members can be found in the existing constituency of Cumberland Centre. In a very moving

presentation to the Commission at its public hearing in Amherst, retired members of the mining communities indicated why their particular needs add to the workload of a rural member. Since the number of proposed ridings in Cumberland County is being reduced from 3 to 2, the Commission recommends that the Legislature consider whether additional paid staff should be authorized for the MLA in the new constituency of Cumberland South, in order to deal with the particular needs of the various mining communities.

BOUNDARY RECOMMENDATIONS

A. Summary of Proposed Constituency Changes: For each of the existing fifty-two legislative constituencies, the following section describes the major changes, if any, which have been recommended by the Provincial Electoral Boundaries Commission. This section is designed as a quick reference guide to the proposed changes. Detailed boundary descriptions are presented in the next section of the Report.

1. **Annapolis East**
   - Renamed Annapolis
   - Gains Annapolis River area from Annapolis West

2. **Annapolis West**
   - Eliminated
   - Loses Annapolis River area to new Annapolis
     - Loses Annapolis Royal, Annapolis Basin/Clements area and Milford/Maitland Bridge area to new Digby-Annapolis Royal

3. **Antigonish**
   - No change

4. **Argyle**
   - No change

5. **Bedford-Musquodoboit Valley**
   - Renamed Bedford-Fall River
   - Gains Bedford area from Halifax St. Margaret's
   - Loses Musquodoboit Valley area to new Colchester-Musquodoboit Valley
   - Loses Windsor Junction/Fall River Station area to new Sackville-Beaverbank
   - Loses Lakeview area to new Sackville-Cobequid

6. **Cape Breton Centre**
   - Gains Scotchtown and River Ryan/Lingan area from Cape Breton Nova

7. **Cape Breton East**
   No change

8. **Cape Breton North**
   No change

9. **Cape Breton Nova**
   Gains Ashby area between Welton Street and Ashby Road from Cape Breton South
   Gains Grand Lake Road area from Cape Breton West
   Loses Scotchtown and River Ryan/Lingan area to Cape Breton Centre

10. **Cape Breton South**
    Gains area inside Sydney Bypass from Cape Breton West
    Loses Ashby area between Welton Street and Ashby Road to Cape Breton Nova

11. **Cape Breton The Lakes**
    No change

12. **Cape Breton West**
    Loses Grand Lake Road area to Cape Breton Nova
    Loses area inside Sydney Bypass to Cape Breton South

13. **Clare**
    No change

14. **Colchester North**
    No change

15. **Colchester South**
    Renamed Colchester-Musquodoboit Valley
    Gains Musquodoboit Valley area from Bedford-Musquodoboit Valley
    Gains Millbrook Reserve from Truro-Bible Hill
    Loses Salmon River to Truro-Bible Hill

16. Cole Harbour

Renamed Cole Harbour-Eastern Passage
Gains Woodside area and Donegal Drive area from Dartmouth South
Loses Cherry Brook/Lake Major area to Preston
Loses Forest Hills Drive area to new Dartmouth-Cole Harbour
Loses Upper Lawrencetown area to new Eastern Shore

17. Cumberland Centre

Eliminated
Loses all area to new Cumberland South

18. Cumberland East

Renamed Cumberland North
Gains area north of Trans-Canada Highway (except Oxford) from Cumberland West
Loses area south of Trans-Canada Highway and east of Nappan River to new Cumberland South

19. Cumberland West

Renamed Cumberland South
Gains all of Cumberland Centre
Gains area south of Trans-Canada Highway and east of Nappan River from Cumberland East
Loses area north of Trans-Canada Highway (except Oxford) to new Cumberland North

20. Dartmouth East

Loses area east of Spring Avenue and south of Mount Edward Road/Main Street to new Dartmouth-Cole Harbour

21. Dartmouth North

Loses area south of Macdonald Bridge and area south of Crichton Avenue to Dartmouth South

22. Dartmouth South

Gains area south of Macdonald Bridge and area south of Crichton Avenue from Dartmouth North

Loses Woodside area and Donegal Drive area to new Cole Harbour-Eastern Passage

23. Digby

Renamed Digby-Annapolis Royal

Gains Annapolis Royal, Annapolis Basin/Clements area and Milford/Maitland Bridge area from Annapolis West

24. Guysborough

Renamed Guysborough-Port Hawkesbury

Gains Port Hawkesbury and Port Hastings area from Inverness South

25. Halifax Atlantic

Loses Cowie Hill area to new Halifax Fairview

26. Halifax-Bedford Basin

Loses Fairview area to new Halifax Fairview

27. Halifax Chebucto

Gains area west of Windsor (except Northwest Arm area) from Halifax Citadel

Loses area east of Windsor to Halifax Needham

Loses area west of CNR tracks to new Halifax Fairview

28. Halifax Citadel

Eliminated

Loses Citadel/downtown area and Northwest Arm area to new Halifax Citadel

Loses area east of Windsor (except Citadel/downtown area) to Halifax Needham

Loses area west of Windsor (except Northwest Arm area) to Halifax Chebucto

29. Halifax Cornwallis

Renamed Halifax Citadel

Gains Citadel/downtown area and Northwest Arm from Halifax Citadel

30. Halifax Eastern Shore

Renamed Eastern Shore
Loses Preston/Lake Echo/Porters Lake area to new Preston
Gains Upper Lawrencetown area from Cole Harbour

31. Halifax Needham

Gains area east of Windsor from Halifax Chebucto
Gains area east of Windsor (except Citadel/downtown area) from Halifax Citadel

32. Halifax St. Margaret's

Renamed Timberlea-Prospect
Loses St. Margaret's Bay area to new Chester-St. Margaret's
Loses Hammonds Plains/Lucasville/Pockwock Road area to new Sackville-Beaverbank
Loses Bedford area to new Bedford-Fall River

33. Hants East

No change

34. Hants West

No change

35. Inverness North

Renamed Inverness
Gains area north of Port Hawkesbury and Port Hastings area from Inverness South
Loses area north of the southern boundary of Cape Breton Highlands National Park to Victoria

36. Inverness South

Eliminated
Loses Port Hawkesbury and Port Hastings area to new Guysborough-Port Hawkesbury
Loses area north of Port Hawkesbury and Port Hastings area to new Inverness

37. Kings North

Gains area east of Black Rock Road and north of Highway 101 from Kings West

38. Kings South

Gains area east of Waterville (including Waterville) and south of Highway 101 from Kings West

39. Kings West

Loses area east of Black Rock Road and north of Highway 101 to Kings North

Loses area east of Waterville (including Waterville) and south of Highway 101 to Kings South

40. Lunenburg Centre

Renamed Lunenburg

Loses area west of LaHave River (except New Germany area) to Lunenburg West

Loses Tancook Islands to new Chester-St. Margaret's

41. Lunenburg East

Renamed Chester-St. Margaret's

Gains Tancook Islands from Lunenburg Centre

Gains St. Margaret's Bay area from Halifax St. Margaret's

42. Lunenburg West

Gains area west of LaHave River (except New Germany area) from Lunenburg Centre

43. Pictou Centre

Loses Westville to Pictou East

44. Pictou East

Gains Westville from Pictou Centre

Loses area along Middle River of Pictou and area north of Westville to Pictou West

45. Pictou West

Gains area along Middle River of Pictou and area north of Westville from Pictou East

46. Queens

No change

47. Richmond

No change

48. Sackville

Renamed Sackvile-Cobequid

Gains Lakeview area from Bedford-Musquodoboit Valley

Loses area north of Beaverbank Road to new Sackville-Beaverbank

49. Shelburne

No change

50. Truro-Bible Hill

Gains Salmon River from Colchester South

Loses Millbrook Reserve to new Colchester-Musquodoboit Valley

51. Victoria

Gains area formerly part of Inverness North lying north of the southern boundary of Cape Breton Highlands National Park

52. Yarmouth

No change

B. Boundary Descriptions: The following pages present the proposed boundaries for the 52 electoral constituencies in the province of Nova Scotia. Where the description of the boundaries of an electoral district refers to or incorporates a county boundary or a municipal boundary, the county boundary or municipal boundary is the boundary as it existed on January 1, 1992. Description references to "streets", "roads", "rights-of-way", "water features" or "railways" signify the centre line of the feature unless otherwise described or stated.

Nova Scotia has 13 Mi'kmaq bands and 38 reserves (19 of which are populated), according to the Schedule of Indian Bands, Reserves and Settlements released by the Department of Indian and Northern Affairs in December 1990. Each reserve is specifically mentioned in the boundary description of its proposed provincial riding.

Composition of the House of Assembly

The Commission recommends that the House be composed of 52 members, one of whom shall be elected by each of the following electoral districts, namely: Annapolis, Antigonish, Argyle, Bedford-Fall River, Cape Breton Centre, Cape Breton East, Cape Breton North, Cape Breton Nova, Cape Breton South, Cape Breton The Lakes, Cape Breton West, Chester-St. Margaret's, Clare, Colchester-Musquodoboit Valley, Colchester North, Cole Harbour-Eastern Passage, Cumberland North, Cumberland South, Dartmouth-Cole Harbour, Dartmouth East, Dartmouth North, Dartmouth South, Digby-Annapolis Royal, Eastern Shore, Guysborough-Port Hawkesbury, Halifax Atlantic, Halifax Bedford Basin, Halifax Chebucto, Halifax Citadel, Halifax Fairview, Halifax Needham, Hants East, Hants West, Inverness, Kings North, Kings South, Kings West, Lunenburg, Lunenburg West, Pictou Centre, Pictou East, Pictou West, Preston, Queens, Richmond, Sackville-Beaverbank, Sackville-Cobequid, Shelburne, Timberlea-Prospect, Truro-Bible Hill, Victoria and Yarmouth.

1. **Annapolis**, consisting of:

in the County of Annapolis,

i) the Towns of Bridgetown and Middleton,

ii) Municipal Districts 1, 2, 3, 4, 5, 9, 10, 11 and 12, and

iii) that part of Municipal District 8 lying north and east of a line described as follows: starting at the point where Allains Creek meets the northern boundary of Municipal District 8; then southeast and south along Allains Creek and Allains River to the point due west of the intersection of Highway 8 and Highway 101; then due east in a straight line to the intersection of Highway 8 and Highway 101; then southeast in a straight line to the point where South Brook flows out of Keenan Lake; then east in a straight line to the point where Ten Mile Brook flows out of Dargie Lake; then east along the southern shore of Dargie Lake to the eastern boundary of Municipal District 8.

2. **Antigonish**, consisting of:

the County of Antigonish, including Pomquet and Afton Reserve (23).

3. **Argyle**, consisting of:

in the County of Yarmouth, the Municipality of the District of Argyle.

4. **Bedford-Fall River**, consisting of:

in the County of Halifax,

i) the Town of Bedford,

ii) Municipal District 14,

iii) that part of Municipal District 17 lying east of a line described as follows: starting at the point where Kinsac Lake meets the northwestern boundary of Municipal District 17; then south along Kinsac Lake to the point where an unnamed brook flows out of Kinsac Lake near the southernmost point of Kinsac Lake; then south along the unnamed brook to Fall River Road; then southeast in a straight line to the northern corner of property 40565053; then southeast along the northeastern property lines of properties 40565053 and 511840 to the eastern corner of property 511840; then south in a straight line to the southeastern corner of property 40097073; then southwest along the southeastern property line of property 40097073 to Third Lake; then south along Third Lake to the point where an unnamed brook flows out of Third Lake near the southeasternmost point of Third Lake; then south along the unnamed brook to Three Mile Lake; then southeast along Three Mile Lake to Highway 102 (Bicentennial Drive); then southwest along Highway 102 (Bicentennial Drive) to the Canadian National Railway line; then south along the Canadian National Railway line to Rocky Lake; then west along the northern shore of Rocky Lake to the western boundary of Municipal District 17, and

iv) Shubenacadie Reserve (13).

5. **Cape Breton Centre**, consisting of:

in the County of Cape Breton,

i) the Towns of Dominion and New Waterford, and

ii) Municipal Districts 5 and 18.

6. **Cape Breton East**, consisting of:

in the County of Cape Breton, the Town of Glace Bay.

7. **Cape Breton North**, consisting of:

in the County of Cape Breton,

i) the Towns of North Sydney and Sydney Mines,

ii) that part of Municipal District 2 lying east of a line described as follows: starting at the point where Sullivan Creek flows into Little Pond at the eastern boundary of Municipal District 2; then southwest in a straight line to the point where a power transmission line crosses the Canadian National Railway line (approximately 340 m northwest of Highway 305 (Bras D'Or/Florence Road)); then southeast along the power transmission line to the eastern boundary of Municipal District 2,

iii) that part of Municipal District 3 lying east of a line described as follows: starting at the point where Peppett Street crosses the eastern boundary of Municipal District 3; then northwest along Peppett Street to Highway 125; then north and northeast along Highway 125 and Halfway Road to the northern boundary of Municipal District 3, and

iv) that part of Municipal District 20 lying north of a line described as follows: starting at the point where a power transmission line crosses the eastern boundary of Municipal District 20 (approximately 700 m northeast of Highway 105 (Trans-Canada Highway)); then northwest along the power transmission line to the western boundary of Municipal District 20.

8. **Cape Breton Nova**, consisting of:

in the County of Cape Breton,

i) that part of the City of Sydney lying northeast of a line described as follows: starting at the point where Muggah Creek flows into the South Arm of Sydney Harbour; then southeast along Muggah Creek to Prince Street; then east along Prince Street to Ashby Road; then south and southeast along Ashby Road to Acadia Drive; then northeast along Acadia Drive to the northwesterly projection of the rear property lines of the properties on the southwestern side of Loyola Crescent; then southeast along the northwesterly projection and the rear property lines of the properties on the southwestern side of Loyola Crescent and their southeasterly projection to the southeastern boundary of the City of Sydney,

ii) Municipal Districts 4 and 19, and

iii) Sydney Reserve (28A).

9. **Cape Breton South**, consisting of:

in the County of Cape Breton,

i) that part of the City of Sydney lying southwest of a line described as follows: starting at the point where Muggah Creek flows into the South Arm of Sydney Harbour; then southeast along Muggah Creek to Prince Street; then east along Prince Street to Ashby Road; then south and southeast along Ashby Road to Acadia Drive; then northeast along Acadia Drive to the northwesterly projection of the rear property lines of the properties on the southwestern side of Loyola Crescent; then southeast along the northwesterly projection and the rear property lines of the properties on the southwestern side of Loyola Crescent and their southeasterly projection to the southeastern boundary of the City of Sydney,

ii) that part of Municipal District 10 lying north of Highway 125 (Sydney Bypass),

iii) that part of Municipal District 17 lying northwest of Highway 125 (Sydney Bypass) and south of Wash Brook, and

iv) Membertou Reserve (28B).

10. **Cape Breton The Lakes**, consisting of:

in the County of Cape Breton,

i) Municipal Districts 1, 6, 7, 8 and 9,

ii) that part of Municipal District 2 lying west of a line described as follows: starting at the point where Sullivan Creek flows into Little Pond at the eastern boundary of Municipal District 2; then southwest in a straight line to the point where a power transmission line crosses the Canadian National Railway line (approximately 340 m northwest of Highway 305 (Bras D'Or/Florence Road)); then southeast along the power transmission line to the eastern boundary of Municipal District 2,

iii) that part of Municipal District 3 lying west of a line described as follows: starting at the point where Peppett Street crosses the eastern boundary of Municipal District 3; then northwest along Peppett Street to Highway 125; then north and northeast along Highway 125 and Halfway Road to the northern boundary of Municipal District 3,

iv) that part of Municipal District 20 lying south of a line described as follows: starting at the point where a power transmission line crosses the eastern boundary of Municipal District 20 (approximately 700 m northeast of Highway 105 (Trans-Canada Highway)); then northwest along the power transmission line to the western boundary of Municipal District 20, and

v) Eskasoni Reserves (3, 3A).

11. **Cape Breton West**, consisting of:

in the County of Cape Breton,

i) Municipal Districts 11, 12, 13, 14, 15 and 16,

ii) that part of Municipal District 10 lying south of Highway 125 (Sydney Bypass),

iii) that part of Municipal District 17 lying southeast of Highway 125 (Sydney Bypass) and that part of Municipal District 17 lying northwest of Highway 125 (Sydney Bypass) and north of Wash Brook, and

iv) Caribou Marsh Reserve (29).

12. **Chester-St. Margaret's**, consisting of:

in the County of Lunenburg,

i) the Municipality of the District of Chester, including Gold River Reserve (21), New Ross Reserve (20) and Pennal Reserve (19), and

ii) in the Municipality of the District of Lunenburg, Municipal District 10, and

in the County of Halifax,

i) Municipal District 1, and

ii) that part of Municipal District 3 lying west of a line described as follows: starting at the northernmost point of Municipal District 3; then southeast in a straight line to the point where

a power transmission line crosses Highway 103 (approximately 1 km west of Highway 213); then south in a straight line to the point where the East River crosses Highway 3; then south in a straight line to the point where Highway 333 crosses the southeastern boundary of Municipal District 3 at the Peggy's Cove Soi.

13. **Clare**, consisting of:

in the County of Digby, the Municipality of the District of Clare.

14. **Colchester-Musquodoboit Valley**, consisting of:

in the County of Colchester,

i) the Town of Stewiacke,

ii) Municipal Districts 2, 3, 4 and 14,

iii) that part of Municipal District 15 lying south of the Salmon River, and

iv) Millbrook Reserve (27) and Truro Reserves (27A, 27B, 27C), and

in the County of Halifax,

i) Municipal Districts 12 and 13, and

ii) Beaver Lake Reserve (17).

15. **Colchester North**, consisting of:

in the County of Colchester,

i) Municipal Districts 6, 7, 8, 9, 10, 11, 12 and 16, and

ii) that part of Municipal District 15 lying north of the Salmon River.

16. **Cole Harbour-Eastern Passage**, consisting of:

in the County of Halifax,

i) that part of the City of Dartmouth south of a line described as follows: starting at the point where the easterly projection of the rear property lines of the properties on the southern side of Diana Grace Avenue intersects the eastern boundary of the City of Dartmouth; then west along the easterly projection and the rear property lines of the properties on the southern side of Diana Grace Avenue and their westerly projection to the northeastern property line of property 40513806; then northwest along the northeastern property lines of properties 40513806 and 259143 and their northwesterly projection to Highway 111 (Circumferential Highway); then southwest along Highway 111 (Circumferential Highway) to Pleasant Street; then south along Pleasant Street to Irving Street; then southwest along Irving Street and its southwesterly projection to Halifax Harbour,

ii) that part of the City of Dartmouth south and east of a line described as follows: starting at the point where Portland Street crosses the eastern boundary of the City of Dartmouth; then west along Portland Street to the northerly projection of the rear property lines of the properties on the western side of Donegal Drive; then south along the northerly projection and the rear property lines of the properties on the western side of Donegal Drive to the eastern boundary of the City of Dartmouth,

iii) Municipal Districts 6 and 24,

iv) that part of Municipal District 23 lying south of Cole Harbour Road,

v) that part of Municipal District 25 lying south of a line described as follows: starting at the point where Cole Harbour Road crosses the western boundary of Municipal District 25; then east along Cole Harbour Road to an unnamed brook flowing south from Broom Lake (approximately 200 m southwest of Coleridge Court); then south along the unnamed brook to Cole Harbour; then southeast along Cole Harbour to the eastern boundary of Municipal District 25, and

vi) Cole Harbour Reserve (30).

17. **Cumberland North**, consisting of:

in the County of Cumberland,

i) the Town of Amherst,

ii) Municipal Districts 3, 7 and 8,

iii) that part of Municipal District 1 lying north of a line described as follows: starting at the point where the Nappan River flows into the Maccan River; then northeast along the Nappan River to Highway 104 (Trans-Canada Highway); then southeast along Highway 104 (Trans-Canada Highway) to the southern boundary of Municipal District 1,

iv) that part of Municipal District 4 lying north of Highway 104 (Trans-Canada Highway),

v) that part of Municipal District 6 lying north of Highway 104 (Trans-Canada Highway), and

vi) that part of Municipal District 11 lying north of Highway 104 (Trans-Canada Highway).

18. **Cumberland South**, consisting of:

in the County of Cumberland,

i) the Towns of Oxford, Parrsboro and Springhill,

ii) Municipal Districts 2, 5, 9 and 10,

iii) that part of Municipal District 1 lying south of a line described as follows: starting at the point where the Nappan River flows into the Maccan River; then northeast along the Nappan River to Highway 104 (Trans-Canada Highway); then southeast along Highway 104 (Trans-Canada Highway) to the southern boundary of Municipal District 1,

iv) that part of Municipal District 4 lying south of Highway 104 (Trans-Canada Highway),

v) that part of Municipal District 6 lying south of Highway 104 (Trans-Canada Highway),

vi) that part of Municipal District 11 lying south of Highway 104 (Trans-Canada Highway), and

vii) Franklin Manor Reserve (22).

19. **Dartmouth-Cole Harbour**, consisting of:

in the County of Halifax,

i) that part of the City of Dartmouth bounded by a line described as follows: starting at the intersection of Portland Street and Spring Avenue; then northeast and north along Spring Avenue to Mount Edward Road; then east along Mount Edward Road to the southerly projection of the rear property lines of the properties on the eastern side of Erin Drive; then north along

the southerly projection and the rear property lines of the properties on the eastern side of Erin Drive and their northerly projection to Main Street; then east along Main Street to the eastern boundary of the City of Dartmouth; then south, west and south along the eastern boundary of the City of Dartmouth to Portland Street; then west along Portland Street to Spring Avenue,

ii) that part of Municipal District 7 lying south and west of a line described as follows: starting at the point where Main Street crosses the western boundary of Municipal District 7; then east along Main Street to the point where a power transmission line crosses Main Street (approximately 190 m east of Riley Road); then south along the power transmission line to an unnamed brook flowing south from Broom Lake; then south along the unnamed brook to the southern boundary of Municipal District 7,

iii) that part of Municipal District 23 lying north of Cole Harbour Road, and

iv) that part of Municipal District 25 lying north and west of a line described as follows: starting at the point where an unnamed brook flowing south from Broom Lake crosses the northern boundary of Municipal District 25; then south along the unnamed brook to Cole Harbour Road; then west along Cole Harbour Road to the western boundary of Municipal District 25.

20. **Dartmouth East**, consisting of:

in the County of Halifax, that part of the City of Dartmouth bounded by a line described as follows: starting at the point where Lake Charles meets the northern boundary of the City of Dartmouth; then south along Lake Charles to the Shubenacadie Canal; then south along the Shubenacadie Canal to Lake Micmac; then south along Lake Micmac to Highway 111 (Circumferential Highway); then southeast and south along Highway 111 (Circumferential Highway) to Portland

Street; then east along Portland Street to Spring Avenue; then northeast and north along Spring Avenue to Mount Edward Road; then east along Mount Edward Road to the southerly projection of the rear property lines of the properties on the eastern side of Erin Drive; then north along the southerly projection and the rear property lines of the properties on the eastern side of Erin Drive and their northerly projection to Main Street; then east along Main Street to the eastern boundary of the City of Dartmouth; then northwest, west and south along the eastern and northern boundaries of the City of Dartmouth to the point where Lake Charles meets the northern boundary of the City of Dartmouth.

21. **Dartmouth North**, consisting of:

in the County of Halifax, that part of the City of Dartmouth lying northwest of a line described as follows: starting at the point where Lake Charles meets the northern boundary of the City of Dartmouth; then south along Lake Charles to the Shubenacadie Canal; then south along the Shubenacadie Canal to Lake Micmac; then south along Lake Micmac to Highway 111 (Circumferential Highway); then northwest along Highway 111 (Circumferential Highway) to Micmac Boulevard; then southwest along Micmac Boulevard to Glen Manor Drive; then southwest along Glen Manor Drive to Crichton Avenue; then southwest along Crichton Avenue to Crichton Park Road; then northwest along Crichton Park Road to Thistle Street; then southwest along Thistle Street to Victoria Road; then northwest along Victoria Road to Nantuckett Avenue; then southwest along Nantuckett Avenue and the Angus L. Macdonald Bridge to Halifax Harbour.

22. **Dartmouth South**, consisting of:

in the County of Halifax, that part of the City of Dartmouth bounded by a line described as follows: starting at the point where the Angus L. Macdonald Bridge meets Halifax Harbour; then northeast along the Angus L. Macdonald Bridge and Nantuckett Avenue to Victoria Road; Then southeast along Victoria Road to Thistle Street;

then northeast along Thistle Street to Crichton Park Road; then southeast along Crichton Park Road to Crichton Avenue; then northeast along Crichton Avenue to Glen Manor Drive; then northeast along Glen Manor Drive to Micmac Boulevard; then northeast along Micmac Boulevard to Highway 111 (Circumferential Highway); then southeast and south along Highway 111 (Circumferential Highway) to Portland Street; then east along Portland Street to the northerly projection of the rear property lines of the properties on the western side of Donegal Drive; then south along the northerly projection and the rear property lines of the properties on the western side of Donegal Drive to the eastern boundary of the City of Dartmouth; then southwest and southeast along the eastern boundary of the City of Dartmouth to the easterly projection of the rear property lines of the properties on the southern side of Diana Grace Avenue; then west along the easterly projection and the rear property lines of the properties on the southern side of Diana Grace Avenue and their westerly projection to the northeastern property line of property 40513806; then northwest along the northeastern property lines of properties 40513806 and 259143 and their northwesterly projection to Highway 111 (Circumferential Highway); then southwest along Highway 111 (Circumferential Highway) to Pleasant Street; then south along Pleasant Street to Irving Street; then southwest along Irving Street and its southwesterly projection to Halifax Harbour; then north and northwest along Halifax Harbour to the point where the Angus L. Macdonald Bridge meets Halifax Harbour.

23. **Digby-Annapolis Royal**, consisting of:

in the County of Digby, the Municipality of the District of Digby, including Bear River Reserve (6) (western part), and

in the County of Annapolis,

i) the Town of Annapolis Royal,

ii) Municipal Districts 6 and 7,

iii) that part of Municipal District 8 lying south and west of a line described as follows: starting at the point where Allains Creek meets the northern boundary of Municipal District 8; then southeast and south along Allains Creek and Allains River to the point due west of the intersection of Highway 8 and Highway 101; then due east in a straight line to the intersection of Highway 8 and Highway 101; then southeast in a straight line to the point where South Brook flows out of Keenan Lake; then east in a straight line to the point where Ten Mile Brook flows out of Dargie Lake; then east along the southern shore of Dargie Lake to the eastern boundary of Municipal District 8, and

iv) Bear River Reserves (6 (eastern part), 6A, 6B).

24. **Eastern Shore**, consisting of:

in the County of Halifax,

i) Municipal Districts 9, 10 and 11,

ii) that part of Municipal District 7 lying south and east of a line described as follows: starting at the point where a power transmission line crosses the eastern boundary of Municipal District 7 (approximately 700 m south of Highway 7); then west along the power transmission line to an unnamed brook flowing south from Broom Lake; then south along the unnamed brook to the southern boundary of Municipal District 7,

iii) that part of Municipal District 25 lying east of a line described as follows: starting at the point where an unnamed brook flowing south from Broom Lake crosses the northern boundary of Municipal District 25; then south along the unnamed brook to Cole Harbour; then southeast along Cole Harbour to the eastern boundary of Municipal District 25, and

iv) Sheet Harbour Reserve (36).

25. **Guysborough-Port Hawkesbury**, consisting of:

the County of Guysborough, and

in the County of Inverness,

i) the Town of Port Hawkesbury, and

ii) that part of Municipal District 1 lying south of a line described as follows: starting at the northernmost point of the boundary between Municipal District 1 and the Town of Port Hawkesbury; then due north in a straight line to Charles MacLean Road; then northwest in a straight line to the intersection of Highway 105 (Trans-Canada Highway) and Long Stretch Road; then northwest in a straight line to the point where Mill Brook flows out of Horton Lake; then west along Mill Brook to Long Pond; then northwest along the northern shore of Long Pond to the northernmost point of Long Pond; then due west in a straight line to the Strait of Canso.

26. **Halifax Atlantic**, consisting of:

in the County of Halifax,

i) that part of the City of Halifax lying south and west of a line described as follows: starting at the point where the Northwest Arm meets Halifax Harbour; then northwest along the Northwest Arm to the northwesternmost point of the Northwest Arm; then northwest in a straight line to the centre of the Armdale Rotary; then south in a straight line to Herring Cove Road; then south along Herring Cove Road to the southerly projection of the rear property lines of the properties on the western side of Punchbowl Drive; then north along the southerly projection and the rear property lines of the properties on the western side of Punchbowl Drive to the rear property lines of the properties on the northern side of Punchbowl Drive; then west along the westerly projection of

the rear property lines of the properties on the northern side of Punchbowl Drive to Northwest Arm Drive; then southeast along Northwest Arm Drive to Old Sambro Road; then due west in a straight line to Long Lake; then west, south and west along the southern shore of Long Lake to the western boundary of the City of Halifax, and

ii) Municipal District 5.

27. **Halifax Bedford Basin**, consisting of:

in the County of Halifax, that part of the City of Halifax lying north of a line described as follows: starting at the point where the Canadian National Railway line crosses the western boundary of the City of Halifax; then east and southeast along the Canadian National Railway line to Highway 103; then northeast along Highway 103 to Highway 102 (Bicentennial Drive); then east along Highway 102 (Bicentennial Drive) to Northwest Arm Drive; then northwest and north along Northwest Arm Drive and Dunbrack Street to Willett Street; then southeast along Willett Street to the westerly projection of the rear property lines of the properties on the northern side of Sybyl Court; then east along the westerly projection and the rear property lines of the properties on the northern side of Sybyl Court and their easterly projection to Lacewood Drive; then southeast along Lacewood Drive to Vimy Avenue; then east along Vimy Avenue and its easterly projection to the Canadian National Railway line; then northeast in a straight line to the southernmost point of Bedford Basin (Fairview Cove).

28. **Halifax Chebucto**, consisting of:

in the County of Halifax, that part of the City of Halifax bounded by a line described as follows: starting at the point where Kempt Road crosses the Canadian National Railway line; then south along the Canadian National Railway line to Chebucto Road; then southwest along Chebucto Road and its southwesterly projection to the centre

of the Armdale Rotary; then southeast in a straight line to Quinpool Road; then southeast and east along Quinpool Road to Oxford Street; then south along Oxford Street to Jubilee Road; then east along Jubilee Road to Robie Street; then north along Robie Street to Quinpool Road; then west along Quinpool Road to Windsor Street; then northwest along Windsor Street to Kempt Road; then west along Kempt Road to the Canadian National Railway line.

29. **Halifax Citadel**, consisting of:

in the County of Halifax, that part of the City of Halifax lying south and east of a line described as follows: starting at the point where the Northwest Arm meets Halifax Harbour; then northwest along the Northwest Arm to the northwesternmost point of the Northwest Arm; then northwest in a straight line to the centre of the Armdale Rotary; then southeast in a straight line to Quinpool Road; then southeast and east along Quinpool Road to Oxford Street; then south along Oxford Street to Jubilee Road; then east along Jubilee Road to Robie Street; then north along Robie Street to Quinpool Road; then east along Quinpool Road and Cogswell Street to Brunswick Street; then east along the westbound lane of Cogswell Street to Barrington Street; then due northeast in a straight line to Halifax Harbour.

30. **Halifax Fairview**, consisting of:

in the County of Halifax, that part of the City of Halifax bounded by a line described as follows: starting at the point where the Canadian National Railway line crosses Highway 103; then northeast along Highway 103 to Highway 102 (Bicentennial Drive); then east along Highway 102 (Bicentennial Drive) to Northwest Arm Drive; then northwest and north along Northwest Arm Drive and Dunbrack Street to Willett Street; then southeast along Willett Street to the westerly projection of the rear property lines of the properties on the northern side of Sybyl Court; then east along the westerly projection and the rear property lines of the properties on the northern side of Sybyl Court and their easterly projection to

Lacewood Drive; then southeast along Lacewood Drive to Vimy Avenue; then east along Vimy Avenue and its easterly projection to the Canadian National Railway line; then south along the Canadian National Railway line to Chebucto Road; then southwest along Chebucto Road and its southwesterly projection to the centre of the Armdale Rotary; then south in a straight line to Herring Cove Road; then south along Herring Cove Road to the southerly projection of the rear property lines of the properties on the western side of Punchbowl Drive; then north along the southerly projection and the rear property lines of the properties on the western side of Punchbowl Drive to the rear property lines of the properties on the northern side of Punchbowl Drive; then west along the westerly projection of the rear property lines of the properties on the northern side of Punchbowl Drive to Northwest Arm Drive; then southeast along Northwest Arm Drive to Old Sambro Road; then due west in a straight line to Long Lake; then west, south and west along the southern shore of Long Lake to the western boundary of the City of Halifax; then northwest along the western boundary of the City of Halifax to the intersection of the boundaries of the City of Halifax, Municipal District 4 and Municipal District 5; then north in a straight line to the point where the Canadian National Railway line crosses Highway 103.

31. **Halifax Needham**, consisting of:

in the County of Halifax, that part of the City of Halifax lying north and east of a line described as follows: starting at the southernmost point of Bedford Basin (Fairview Cove); then southwest in a straight line to the point where the easterly projection of Vimy Avenue intersects the Canadian National Railway line; then south along the Canadian National Railway line to Kempt Road; then east along Kempt Road to Windsor Street; then southeast along Windsor Street to Quinpool Road; then east along Quinpool Road and Cogswell Street to Brunswick Street; then east along the westbound lane of Cogswell Street to Barrington Street; then due northeast in a straight line to Halifax Harbour.

32. **Hants East**, consisting of:

in the County of Hants, the Municipality of the District of East Hants, including Indian Brook Reserve (14).

33. **Hants West**, consisting of:

in the County of Hants, the Municipality of the District of West Hants, including St. Croix Reserve (34).

34. **Inverness**, consisting of:

in the County of Inverness,

i) Municipal Districts 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14,

ii) that part of Municipal District 1 lying north of a line described as follows: starting at the northernmost point of the boundary between Municipal District 1 and the Town of Port Hawkesbury; then due north in a straight line to Charles MacLean Road; then northwest in a straight line to the intersection of Highway 105 (Trans-Canada Highway) and Long Stretch Road; then northwest in a straight line to the point where Mill Brook flows out of Horton Lake; then west along Mill Brook to Long Pond; then northwest along the northern shore of Long Pond to the northernmost point of Long Pond; then due west in a straight line to the Strait of Canso,

iii) that part of Municipal District 11 lying south of the southern boundary of Cape Breton Highlands National Park, and

iv) Malagawatch Reserve (4), Margaree Reserve (25) and Whycocomagh Reserve (2).

35. **Kings North**, consisting of:

in the County of Kings,

i) the Town of Kentville,

ii) Municipal Districts 1, 2 and 3, and

iii) that part of Municipal District 4 lying east of a line described as follows: starting at the point where Canada Creek flows into the Minas Channel; then south along Canada Creek to Black Rock Road; then southeast and south along Black Rock Road to the southern boundary of Municipal District 4.

36. **Kings South**, consisting of:

in the County of Kings,

i) the Town of Wolfville,

ii) Municipal Districts 11 and 12,

iii) that part of Municipal District 9 lying northeast of a line described as follows: starting at the point where a power transmission line crosses the western boundary of Municipal District 9 (approximately 2 km north of Aylesford Lake); then southeast in a straight line to the point where Arenburgs Meadows Brook crosses the southern boundary of Municipal District 9,

iv) that part of Municipal District 10 lying east of a line described as follows: starting at the point where Arenburgs Meadows Brook crosses the northern boundary of Municipal District 10; then southeast along Arenburgs Meadows Brook to North River Road; then south in a straight line to the point where the western shore of Four Mile Lake crosses the western boundary of Municipal District 10, and

v) Cambridge Reserve (32) and Horton Reserve (35).

37. **Kings West**, consisting of:

in the County of Kings,

i) the Town of Berwick,

ii) Municipal Districts 5, 6, 7 and 8,

iii) that part of Municipal District 4 lying west of a line described as follows: starting at the point where Canada Creek flows into the Minas Channel; then south along Canada Creek to Black Rock Road; then southeast and south along Black Rock Road to the southern boundary of Municipal District 4,

iv) that part of Municipal District 9 lying southwest of a line described as follows: starting at the point where a power transmission line crosses the western boundary of Municipal District 9 (approximately 2 km north of Aylesford Lake); then southeast in a straight line to the point where Arenburgs Meadows Brook crosses the southern boundary of Municipal District 9, and

v) that part of Municipal District 10 lying west of a line described as follows: starting at the point where Arenburgs Meadows Brook crosses the northern boundary of Municipal District 10; then southeast along Arenburgs Meadows Brook to North River Road; then south in a straight line to the point where the western shore of Four Mile Lake crosses the western boundary of Municipal District 10.

38. **Lunenburg**, consisting of:

in the County of Lunenburg, in the Municipality of the District of Lunenburg,

i) the Towns of Lunenburg and Mahone Bay,

ii) Municipal Districts 1, 2, 3 and 4, and

iii) that part of Municipal District 5 lying east of a line described as follows: starting at the point where the Canadian National Railway line crosses the northern boundary of Municipal District 5 (approximately 2.25 km west of the LaHave River); then southeast along the Canadian National Railway line to the LaHave River; then southeast along the LaHave River to New Germany Lake; then south along the western shore of New Germany Lake to the West River; then southwest along the West River to Varner Brook; then southeast in a straight line to the point where Manning Brook crosses Lower Branch Road; then southeast in a straight line to the point on Veinot Road 300 m southwest of the intersection of Veinot Road and Osborne Road; then northeast along Veinot Road to the LaHave River; then southeast along the LaHave River to Wentzells Lake; then south along Wentzells Lake to the LaHave River; then southeast along the LaHave River to the southern boundary of Municipal District 5.

39. **Lunenburg West**, consisting of:

in the County of Lunenburg, in the Municipality of the District of Lunenburg,

i) the Town of Bridgewater,

ii) Municipal Districts 8, 9, 13 and 15, and

iii) that part of Municipal District 5 lying west of a line described as follows: starting at the point where the Canadian National Railway line crosses the northern boundary of Municipal District 5 (approximately 2.25 km west of the LaHave River); then southeast along the Canadian National Railway line to the LaHave River; then southeast along the LaHave River to New Germany Lake; then south along the western shore of New Germany Lake to the West River; then southwest along the West River to Varner Brook; then southeast in a straight line to the point where Manning Brook crosses Lower Branch Road; then southeast in a straight line to the point on Veinot Road

300 m southwest of the intersection of Veinot Road and Osborne Road; then northeast along Veinot Road to the LaHave River; then southeast along the LaHave River to Wentzells Lake; then south along Wentzells Lake to the LaHave River; then southeast along the LaHave River to the southern boundary of Municipal District 5.

40. **Pictou Centre**, consisting of:

in the County of Pictou, the Towns of New Glasgow, Stellarton and Trenton.

41. **Pictou East**, consisting of:

in the County of Pictou,

i) the Town of Westville,

ii) Municipal Districts 10, 11, 12, 13, 14, 15, 16 and 17,

iii) that part of Municipal District 1 excluding Pictou Island, and

iv) Boat Harbour West Reserve (37), Fishers Grant Reserves (24, 24G) and Merigomish Harbour Reserve (31).

42. **Pictou West**, consisting of:

in the County of Pictou,

i) the Town of Pictou,

ii) Municipal Districts 2, 3, 4, 5, 6, 7, 8 and 9, and

iii) that part of Municipal District 1 contained in Pictou Island.

43. **Preston**, consisting of:

in the County of Halifax,

i) Municipal District 8, and

ii) that part of Municipal District 7 lying north of a line described as follows: starting at the point where Main Street crosses the western boundary of Municipal District 7; then east along Main Street to the point where a power transmission line crosses Main Street (approximately 190 m east of Riley Road); then south and east along the power transmission line to the eastern boundary of Municipal District 7.

44. **Queens**, consisting of:

the County of Queens, including Medway River Reserve (11), Ponhook Lake Reserve (10) and Wildcat Reserve (12).

45. **Richmond**, consisting of:

the County of Richmond, including Chapel Island Reserve (5).

46. **Sackville-Beaverbank**, consisting of:

in the County of Halifax,

i) Municipal Districts 15 and 19,

ii) that part of Municipal District 17 lying north and west of a line described as follows: starting at the point where Kinsac Lake meets the northwestern boundary of Municipal District 17; then south along Kinsac Lake to the point where an unnamed brook flows out of Kinsac Lake near the southernmost point of Kinsac Lake; then south along the unnamed brook to

Fall River Road; then southeast in a straight line to the northern corner of property 40565053; then southeast along the northeastern property lines of properties 40565053 and 511840 to the eastern corner of property 511840; then south in a straight line to the southeastern corner of property 40097073; then southwest along the southeastern property line of property 40097073 to Third Lake; then south along Third Lake to the point where an unnamed brook flows out of Third Lake near the southeasternmost point of Third Lake; then west along the southern shore of Third Lake to the point where an unnamed brook flows into Third Lake from Second Lake; then west along the unnamed brook to Second Lake; then west along Second Lake to the western boundary of Municipal District 17,

iii) that part of Municipal District 18 lying north of a line described as follows: starting at the westernmost point of the boundary between Municipal District 18 and the Town of Bedford; then west in a straight line to the point where Highway 213 intersects an unnamed road (approximately 400 m west of Pockwock Road and approximately 620 m east of Yankeetown Road); then west in a straight line to the westernmost point of Municipal District 18,

iv) that part of Municipal District 21 lying north of a line described as follows: starting at the point where the Beaverbank Connector crosses the eastern boundary of Municipal District 21; then southwest along the Beaverbank Connector to Highway 101; then due southwest in a straight line to the western boundary of Municipal District 21, and

v) that part of Municipal District 22 lying north of Beaverbank Road.

47. **Sackville-Cobequid**, consisting of:

in the County of Halifax,

i) Municipal Districts 16 and 20,

ii) that part of Municipal District 17 bounded by a line described as follows: starting at the point where Second Lake meets the western boundary of Municipal District 17; then east along Second Lake to the point where an unnamed brook flows out of Second Lake near the easternmost point of Second Lake; then east along the unnamed brook to Third Lake; then east along the southern shore of Third Lake to the point where an unnamed brook flows out of Third Lake near the southeasternmost point of Third Lake; then south along the unnamed brook to Three Mile Lake; then southeast along Three Mile Lake to Highway 102 (Bicentennial Drive); then southwest along Highway 102 (Bicentennial Drive) to the Canadian National Railway line; then south along the Canadian National Railway line to Rocky Lake; then west along the northern shore of Rocky Lake to the western boundary of Municipal District 17; then north along the western boundary of Municipal District 17 to Second Lake,

iii) that part of Municipal District 21 lying south of a line described as follows: starting at the point where the Beaverbank Connector crosses the eastern boundary of Municipal District 21; then southwest along the Beaverbank Connector to Highway 101; then due southwest in a straight line to the western boundary of Municipal District 21, and

iv) that part of Municipal District 22 lying south of Beaverbank Road.

48. **Shelburne**, consisting of:

the County of Shelburne.

49. **Timberlea-Prospect**, consisting of:

in the County of Halifax,

i) that part of the City of Halifax lying west of a line described as follows: starting at the point where the Canadian National

Railway line crosses the western boundary of the City of Halifax; then east and southeast along the Canadian National Railway line to Highway 103; then south in a straight line to the intersection of the boundaries of the City of Halifax, Municipal District 4 and Municipal District 5,

ii) Municipal Districts 2 and 4,

iii) that part of Municipal District 3 lying east of a line described as follows: starting at the northernmost point of Municipal District 3; then southeast in a straight line to the point where a power transmission line crosses Highway 103 (approximately 1 km west of Highway 213); then south in a straight line to the point where the East River crosses Highway 3; then south in a straight line to the point where Highway 333 crosses the southeastern boundary of Municipal District 3 at the Peggy's Cove Soi, and

iv) that part of Municipal District 18 lying south of a line described as follows: starting at the westernmost point of the boundary between Municipal District 18 and the Town of Bedford; then west in a straight line to the point where Highway 213 intersects an unnamed road (approximately 400 m west of Pockwock Road and approximately 620 m east of Yankeetown Road); then west in a straight line to the westernmost point of Municipal District 18.

50. **Truro-Bible Hill**, consisting of:

in the County of Colchester,

i) the Town of Truro, and

ii) Municipal Districts 1, 5 and 13.

51. **Victoria**, consisting of:

the County of Victoria, including Wagmatcook Reserve (1), and

in the County of Inverness, that part of Municipal District 11 lying north of the southern boundary of Cape Breton Highlands National Park.

52. **Yarmouth**, consisting of:

in the County of Yarmouth, the Municipality of the District of Yarmouth, including Yarmouth Reserve (33).

C. Native Seat Recommendation: On the basis of the consultation process with, and at the request of, the Mi'kmaq community, the Provincial Electoral Boundaries Commission hereby recommends that the proposed Mi'kmaq seat in the Nova Scotia House of Assembly not be implemented at this time.

However, because the Mi'kmaq people have expressed an interest in a legislative position of some kind, but are not prepared to make a final decision within the timeframe under which the Commission must report to the Legislature, the Commission recommends that the House of Assembly adopt a procedure, including an appropriate budget and tentative deadline, for further consultation with the Mi'kmaq people.

IMPLEMENTATION OF THE REPORT

Given the extensive boundary revisions recommended and given the need for both the Chief Electoral Office and the political parties to have adequate time to accommodate their organizations to the proposed changes, the Commission hereby recommends a minimum implementation period of three months from the date of assent to the appropriate enabling legislation. The House of Assembly may wish to consider a longer period for implementation.

FUTURE BOUNDARY REVISIONS

As with the issue of implementation, the Provincial Electoral Boundaries Commission feels obligated to comment on the question of the need for a periodic review of electoral boundaries. The idea of a periodic review of electoral boundaries was raised in the Report of the Select Committee on Establishing an Electoral Boundaries Commission (pp. 8-9).

The Provincial Electoral Boundaries Commission hereby recommends that all future boundary revisions be carried out by an Independent Boundaries Commission and that such required reviews take place once every ten years, based on the Canadian census. In carrying out the required, independent, decennial boundary review, the Provincial Electoral Boundaries Commission recommends the following process. The Independent Boundaries Commission will be appointed in the spring of the year following the Canadian census (e.g., the spring of 2002). The Independent Boundaries Commission will hold public hearings, to be completed by the fall of the year (e.g., November 1, 2002). The Independent Boundaries Commission will make its report to the House of Assembly, no later than March 31 of the following year (e.g., March 31, 2003).

Prior to the appointment of the Independent Boundaries Commission, an initial budget will be granted for its work, which will include money for initial staff, and suitable office space. A revised final budget will be prepared by the Commission for approval by Management Board within 60 days of its appointment. If a permanent boundaries secretariat is established, it might be included, between redistributions,

as part of the Chief Electoral Office. The Chairperson of the Independent Boundaries Commission should be given the discretionary power to spend the budget as is necessary to carry out the work of the Commission. Normal Management Board procedures should not be imposed on the Independent Boundaries Commission during the redistribution process, except as to the total amount of money to be spent.

The permanent secretariat should be a part-time position or positions, paid a reasonable per diem and expenses, and located within the Chief Electoral Office. The permanent secretariat should be authorized to select and purchase a Geographic Information System (GIS) and to use it to prepare the maps and data with respect to all future boundary revisions. Several specific GIS systems for political redistribution are now available, but the necessary data and maps must be produced before they can be utilized by a boundaries commission in Nova Scotia.

Constituency maps with polling divisions should be produced for each riding. These maps should be made available to any interested individual or party organization, either free of charge or for a nominal fee. At present such maps are unavailable, which created a serious data problem for the Commission.

The Commission also recommends a thorough review and updating of all polling divisions and their boundary descriptions. During the course of the public hearings several citizens described the confusion that sometimes exists during an election over polling boundaries. An extreme

example of this problem is apparent in the boundary description of poll number 70 for Hemford in the current constituency of Lunenburg Centre:

> Comprising the area of Hemford and Simpson's Corner and bounded on the southeast by a straight line drawn from the head of Hirtle's Lake to and including the house now or formerly of Ephriam Thompkins on the Thompkins Road, thence to West River Bridge on the New Canada Road, thence along West River to New Germany Lake, thence northwesterly to the County Line and bounded on the Southwest by the boundary line of Municipal District No. 9.

As explained in a letter from Mr. Stan Rose, the returning officer for the Lunenburg Centre constituency, Ephriam Thompkins' house no longer exists and probably hasn't for over a century. A polling division description based on a nonexistent house is unacceptable. New polling division boundary descriptions should avoid nonpermanent landmarks.

The Provincial Electoral Boundaries Commission recommends that boundary descriptions for all polling divisions be produced with the recommended GIS system.

APPENDICES

A. Order-in-Council 91-844

B. Soliciting Public Input
   (i) newspaper advertisement
   (ii) contact form
   (iii) list of presenters (public hearings)
   (iv) list of written submissions

C. Legal Opinions Regarding a Native Seat
   (i) Mr. A. William Cox, Q.C., legal counsel to the Provincial Electoral Boundaries Commission
   (ii) Mr. Bruce Wildsmith, legal counsel for the Union of Nova Scotia Indians
   (iii) Response by Mr. A. William Cox, Q.C., to the legal opinion by Mr. Bruce Wildsmith
   (iv) Mr. D. Bruce Clarke, legal counsel for the Native Council of Nova Scotia
   (v) Mr. E. Anthony Ross, legal counsel for the Confederacy of Mainland Mi'kmaqs

D. Summary of Meeting with the Mi'kmaq Community on February 6-7, 1992 (prepared by Mr. Noel Doucette and Dr. Fred Wien).

E. Letter from Dr. Fred Wien

APPENDIX A: ORDER-IN-COUNCIL 91-844

Certified to be a true copy of an Order of his Honour the Lieutenant Governor of Nova Scotia in Council made the 16th day of July, A.D. , 1991.

91-844

WHEREAS a Select Committee of the House of Assembly, the Select Committee on Establishing an Electoral Boundaries Commission, was appointed on May 24, 1991, by House Resolution 1681, to report to the House of Assembly on the composition and terms of reference of a Provincial Electoral Boundaries Commission and the timetable for its reporting to the House of Assembly;

AND WHEREAS the Report of the Select Committee was presented to the House of Assembly on July 3, 1991, containing the recommendations of the Select Committee respecting the Provincial Electoral Boundaries Commission;

AND WHEREAS it is deemed expedient to implement the recommendations of the Select Committee and cause inquiry to be made, pursuant to the Public Inquiries Act, into and concerning a public matter in relation to which the Legislature of Nova Scotia may make laws, in particular, into the electoral boundaries of Nova Scotia;

NOW THEREFORE, the Lieutenant Governor, by and with the advice of the Executive Council of Nova Scotia, and pursuant to the recommendations of the Select Committee on Establishing an Electoral Boundaries Commission, is pleased to:

1. appoint the following persons as Commissioners under the Public Inquiries Act

(a) Professor Ronald G. Landes of Dartmouth, in the County of Halifax;
(b) C. Denne Burchell of Sydney, in the County of Cape Breton;
(c) Ms. Alphonsine Saulnier of Salmon River, in the County of Digby;
(d) Professor Jennifer Smith of Halifax, in the County of Halifax;
(e) Mrs. Carolyn Thomas of East Preston, in the County of Halifax; and
(f) Sherman Zwicker of Lunenburg, in the County of Lunenburg;

to be known as the Provincial Electoral Boundaries Commission;

2. appoint Professor Ronald G. Landes as chairman of the Provincial Electoral Boundaries Commission;

3. refer to the Provincial Electoral Boundaries Commission the Report of the Select Committee on Establishing an Electoral Boundaries Commission, presented to the House of Assembly on the 3rd day of July, A.D., 1991:

4. direct that the Provincial Electoral Boundaries Commission shall:

(a) inquire into and revise the constituency boundaries of the Province, resulting in a fifty-two member Legislative Assembly, with one additional member to represent the Mi'kmaq people of Nova Scotia; and
(b) report its recommendations respecting constituency boundaries, including recommended names for each constituency, to the Speaker of the House of Assembly

on or before December 31, 1991, or as soon thereafter as is reasonably possible, but in no case later than in time for consideration of the Commission's recommendations by the Legislature at the Spring sitting of the House of Assembly in 1992,

in accordance with the recommendations contained in Part II of the Report of the Select Committee;

5. authorize the Commission to hold and conduct such hearings, and hear such representations and consider such other information, at such times and places, as it deems advisable, respecting existing electoral districts and the establishment of new electoral districts in the Province, and the area, boundaries, name, representation and implementation of those electoral districts;

6. authorize the Commission to make rules to regulate its proceedings and conduct its business;

7. direct the Commission to submit a budget to Management Board, for approval by Management Board;

8. subject to guidelines established by Management Board and subject to approval of the budget of the Commission, authorize the Commission to retain the services of such technical, clerical and other personnel, including a secretary and legal counsel, who in the opinion of the Commission are required for the purpose of the inquiry;

9. order that each member of the Commission and its personnel be paid such remuneration as determined in accordance with rates, policies and procedures established by Management Board;

10. authorize the payment of such necessary disbursements, travel and reasonable expenses of the members of the Commission and its

personnel as are required in the discharge of their duties, in accordance with rates, policies and procedures established by Management Board;

11. order that remuneration, costs and expenses payble or incurred in the course of the inquiry shall be paid out of the Consolidated Fund of the Province;

12. direct that, in the same session of the Legislature in which the Assembly, by resolution, adopts or adopts with alterations the recommendations contained in the Report of the Commission, the member of the Executive Council holding the office of Attorney General shall introduce a Bill to establish new constituencies in accordance with the resolution of the House.

H. F. G. STEVENS, Q.C.,
CLERK OF THE EXECUTIVE COUNCIL

APPENDIX B(i): NEWSPAPER ADVERTISEMENT

PROVINCIAL ELECTORAL BOUNDARIES COMMISSION

Call for submissions

Pursuant to Order-in-Council 91-844 of the government of Nova Scotia, a Provincial Electoral Boundaries Commission has been established to recommend revisions to the electoral boundaries of the province of Nova Scotia. The Commission is required to consult with the public and to seek the public's advice on this matter. In order to do so, public hearings will be held throughout the province. Listed below are the dates that the Commission will hold hearings.

Sackville - Oct. 7, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Sackville Fire Hall

Preston - Oct. 8, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Black Cultural Centre

Cole Harbour - Oct. 9, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Cole Harbour Place

Bridgewater - Oct. 15, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Best Western Bridgewater Inn

Sydney - Oct. 21, 1991
Time: 7-9 p.m.
Location: Sheraton Mariner Hotel

Sydney - Oct. 22, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Sheraton Mariner Hotel

Port Hawkesbury- Oct. 23, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Wandlyn Inn

Antigonish - Oct. 28, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Best Western Claymore Inn

Stellarton - Oct. 29, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Heather Motor Hotel

Amherst - Nov. 4, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Wandlyn Inn

Truro - Nov. 5, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Best Western Glengarry

Bridgetown - Nov. 12, 1991
Time: 2–4:30 p.m., 7-9 p.m.
Location: Bridgetown Motor Hotel

Wolfville - Nov. 13, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Old Orchard Inn

Meteghan - Nov. 18, 1991
Time: 7-9 p.m.
Location: Ecole Stella-Maris

Yarmouth - Nov. 19, 1991
Time: 2-4:30 p.m., 7-9 p.m.
Location: Rodd Grand Hotel

Dartmouth - Nov. 25, 1991
Time: 2-4:30 p.m., 6-8 p.m.
Location: Dartmouth Regional Library

Halifax - Nov. 25, 1991
Time: 1-3 p.m.
Location: North Branch Library

Halifax - Nov. 25, 1991
Time: 7-9 p.m.
Location: Halifax Hilton

Anyone wishing to appear at one of the public hearings should contact the Commission by **September 27, 1991.** Written briefs may be submitted to the Commission at anytime until **November 25, 1991.** Submissions may be made in either official language.

Provincial Electoral Boundaries Commission
P.O. Box 276, Halifax, Nova Scotia B3J 2N7
Telephone: 424-7192, Fax: 424-0618

APPENDIX B(ii): CONTACT FORM

DATE OF CONTACT _____

____ phone ____letter

NAME_____
GROUP_____
ADDRESS_____
_____
POSTAL CODE_____
TELEPHONE_____HOME
_____WORK
FAX_____
CONTACT PERSON (if different than above)_____
TELEPHONE_____HOME
_____WORK
FAX_____

REQUEST FOR INFORMATION :

HEARING SCHEDULE ___
REPORT OF THE SELECT COMMITTEE ON ESTABLISHING AN ELECTORAL BOUNDARIES COMMISSION (terms of reference only) ___
OTHER ___

WISH TO APPEAR BEFORE THE COMMISSION; YES_____ NO_____
ABLE TO APPEAR: ___ afternoon ___ evening ___ either

FIRST CHOICE : PLACE_____
DATE_____
TIME_____

SECOND CHOICE: PLACE_____
DATE_____
TIME_____

UNABLE TO APPEAR: _____

SPECIAL NEEDS:_____

WE WILL CONFIRM BY LETTER OR FAX YOUR HEARING SCHEDULE

APPENDIX B(iii): LIST OF PRESENTERS (PUBLIC HEARINGS)

Sackville (October 7, 1991): John Holm, Don Boutilier, David Oxner, David Grace, Cathy Tanner, Bill MacDonald, Allan Smith, David Barrett, Walter Regan

Preston (October 8, 1991): Howard Williams, Rev. Darryl G. Gray, Hon. Tom McInnis, Wayne Adams, Wendall Thomas, Allister Johnston, Ben Bates, Bruce Johnston, David Hensbee, Alma Johnston

Cole Harbour (October 9, 1991): Donald Blakely, Bill Stanbrook, Linda MacDonald, David Nantes, Alan Mitchell, Ralph Sparks, Ron Cooper

Bridgewater (October 15, 1991): Derek Wells, Stan Rose, Allan Fownes, Laurence Mawhinney

Sydney (October 21-22, 1991): Vince MacLean, J. B. Boudreau, Duncan Gould, Paul MacEwan, John Abbass, Dr. John Stevens

Port Hawkesbury (October 23, 1991): Richard Mann, Yvette Samson, Ben Samson, Louise Marchand, Albert Poirier, Lionel Deveau, Ed MacDonald

Antigonish (October 28, 1991): William Gillis, A. Hyland Fraser, David Smith

Stellarton (October 29, 1991): Elmer Goodwin, Mildred Pushie, Carl Levo, Walter Tucker, Robert Leahy, Jim Mitchell, Nick Scaravelli, Doug Marshall

Amherst (November 4, 1991): Bob Burchell, Cecil Colwell, John Tabor, Neil Noiles, Ruth Allen, Brian Creighton, Marsh Fox, Gardner Hurley

Truro (November 5, 1991): Debbie Mattatall Dobson, Edward Lorraine, John Wheelock

Bridgetown (November 12, 1991): Basil Stewart

Wolfville (November 13, 1991): Clara Jefferson, Haamid Rasheed, Eric Sturk, Eric Meisner, Robert Ripley, Gary Cochran

Meteghan (November 18, 1991): Kenneth Gaudet, Paul d'Entremont, Jeannette Saulnier, Betty Dugas-LeBlanc, Gérard d'Entremont, Corinne Pothier, Léger Comeau, Denise LeBlanc, Georgette LeBlanc, Liette Deveau, Jocelyne Comeau, Maurice LeBlanc, Hon. Guy LeBlanc, Jean Melanson, Delphis Comeau, André Valotaire, Norbert Comeau, Roland Deveau, Hélène Mazier, Jean LeBlanc, Eddie Comeau

Yarmouth (November 19, 1991): Edward LeBlanc, Robert Amirault, Robert Thibault, Maurice LeBlanc, Raymond Surette, Pauline d'Entremont, Réal Boudreau, Coral d'Entremont, Cyrille LeBlanc, Diane LaBelle-Davie, Peter Boudreau

Dartmouth (November 25, 1991): Darrell Dexter, Sandy Jolly, John Osborne, Tracey Preeper, David Smith, Dr. Jim Smith

Halifax (November 26, 1991): Danny Paul, David Hendsbee, Haamid Rasheed, Monique Jawed, Gerry Fogarty, Maurice Cody, Paul Comeau, George Hawkins, Marie-Germaine d'Entremont, Harley d'Entremont, Hon. Neil LeBlanc

APPENDIX B(iv): LIST OF WRITTEN PRESENTATIONS

Adams, Wayne
Alapin, Peter C.
Argyle Progressive Conservative Association
Ball, Kevin
Bates, Ben
Boudreau, B. J.
Boudreau, Daniel
Boudreau, Léo
Boudreau, Simon Pierre
Chambre de Commerce de Clare
Chamber of Commerce
Chéticamp Presentation
Le comité régional de la FANE
La Commission de développement de Chéticamp
Le Comité Parents/Professeurs
Conseil Paroissial Saint-Joseph-du-Moine
La Société Saint-Pierre
Christie, Peter G.
Clare Senior Citizens Club
Club des Seniors à Mavillette
Cole, William
Cole Harbour Liberal Association
Comité de parents acadiens
Comité pour l'éducation en français
Confederacy of Mainland Micmacs
Conseil Cooperatif Acadien de la Nouvelle Écosse
Conseil jeunesse d'Argyle
Conseil Jeunesse de Clare
Crawford, W.
Creighton, Brian S.
Dartmouth East Liberal Association
Dexter, Darrell
District 6 Ratepayers (Cole Harbour)
East Preston Ratepayers Association
Festival Acadien à Sainte-Anne-du-Ruisseau
Festival Acadien de Clare
Festival acadien de Wedgeport
Foyer-École de Pubnico-Ouest
Garderie familiale de Clare
Gillis, Bill
Graham, Danny
Graham, Judson
Halifax/Bedford Basin Liberal Association
Hendsbee, David
Holm, John
Institut de développement communautaire
Jolly, Sandra L.
L'administration de l'école acadienne de Petit de Grat
L'Association des Acadiennes d'Argyle
L'Association des Acadiennes de la Nouvelle-Écosse
L'Association des Acadiennes de la Nouvelle-Écosse, région de Chéticamp
L'Association du Partie conservateur de Clare

APPENDIX B(iv) (continued)

L'Association Libérale de Clare
L'Association Touristique de Clare Tourism Association
La Baie-en-Joie
La Fédération Acadienne de la Nouvelle-Écosse
La Fédération Acadienne de la Nouvelle-Écosse, Comité régional d'Argyle
La Fédération Acadienne de la Nouvelle-Écosse--Comité régional de Clare
La Fédération Acadienne de la Nouvelle-Écosse--Comité régional de Sydney
La Fédération des Parents Acadiens de la Nouvelle-Écosse
La Fédération des Parents Acadiens de la Nouvelle-Écosse--Comité régional de Clare
La Société Chorale de la Baie Sainte Marie
La Société Historique Acadienne de la Baie Sainte Marie
La Société Madeleine LeBlanc
La Société Saint-Pierre
Lake Loon Cherry Brook Community Association
Lamont, Larry
Le centre communautaire acadien de Petit de Grat
Le Club d'Age d'Or (St. Bernard)
Le Club des retraités de Chéticamp
Le Club des Retraité-e-s de St Joseph du Moine
Le Club Richelieu, Pointe-de-L'Église
Le Conseil des Arts et artisanat de Clare
Le Conseil Scolaire-Clare Argyle-School Board
Le Réveil de Pombcoup
Les Étoiles sur l'Horizon
Les Femmes Acadiennes de Clare
Les Horizons de Concession
LeBlanc, Guy J.
LeBlanc, Maurice
LeFort, Simon P.
Liberal Party of Cumberland County
MacAskill, Ken
MacDonald, Ed
MacEwan, Paul
MacLean, Vincent J.
Mann, Richie
Matheson, Donald
Morency, Barbara J.
Municipal Council of the District of Argyle
Municipality of the County of Antigonish
Municipality of the County of Inverness
Municipality of the County of Queens
Municipality of the County of Richmond

Municipality of the District of Clare
New Tusket Area Senior Citizens Group
North Preston Ratepayers Association
Paroisse de Chéticamp
Pictou West Progressive Conservative Association
Preston Political Coordinating Committee
Queen's County Progressive Conservative Association
Radio-Clare CIFA
Robinson, Michael N.
Rose, Stan
Sackville Presentation
- Boutilier, Don
- Grace, David
- Oxner, David
- Tanner, Catherine

Smith, Allan F.
Smith, David
Surette, Raymond
Town of Liverpool
UIES
Université Sainte-Anne
Watershed Association Development Enterprises

APPENDIX C(i)

PROVINCIAL BOUNDARIES COMMISSION

Legal Opinion
re
Creation of Mi'kmaq Seat

PART I - INTRODUCTION

I have been asked to investigate and report to the Provincial Boundaries Commission (the "Commission") on the legal implications of and problems involved in creating a Mi'kmaq seat in Nova Scotia.

The Commission was instructed by Order in Council to:

> (a) inquire into and revise the constituency boundaries in the Province, resulting in a fifty-two member Legislative Assembly, with one additional member to represent the Mi'kmaq people of Nova Scotia.

The Commission was to be guided "in accordance with the recommendations contained in Part II of the Report of the Select Committee". The terms of reference and powers of the Commission are set forth in the Order in Council and the Report of the Select Committee. At page 1 of the Report of the Select Committee the terms of reference for the Commission read, in part, as follows:

> In keeping with the constitutional right to "effective representation", the Committee recommends the following terms of reference for the Provincial Boundaries Commission in determining the province's electoral boundaries:
>
> 1. The primary factors to be considered by the Boundaries Commission to ensure "effective representation" are:
>
> (i) of paramount importance, relative parity of voting power achieved through constituencies of equal population to the extent reasonably possible;
>
> (ii) geography;

(iii) community history;

(iv) community interests;

(v) minority representation, including, in particular, representation of Acadian, Black and Mi'kmaq peoples of Nova Scotia;

(vi) population rate of growth projections.

The Commission is to be guided by the principle that deviations from parity of voting power are only justified on the ground that they contribute to better government of the populace as a whole, giving the weight to regional issues within the populace and geographic factors within the territory governed.

2. After considering the preceding criteria, county boundaries should be followed where desirable, reflecting the historic use of county lines in delineating Nova Scotia's electoral map.

3. Based on the most recent population statistics available to the Provincial Boundaries Commission, the Commission is to delineate electoral boundaries to achieve a 52 member Legislative Assembly with an additional member to represent the Mi'kmaq people in Nova Scotia.

In considering the minority representation, the Commission shall seek out the advice, support and co-operation of, in particular, representatives of the Black, Native and Acadian communities of the Province.

In the case of Native representation, the will of the Legislative Assembly to provide for an additional member in the Assembly to represent the Mi'kmaq people is a progressive and unique step, not just in this Province, but within Canada, and in democracies elsewhere.

To facilitate a full appreciation of the wishes of the Mi'kmaq in Nova Scotia in this regard, the Provincial Boundaries Commission shall undertake a broad and thorough consultation with all native groups, and the native community at large, in this Province, before making its recommendation respecting a Mi'kmaq seat in the Legislature.

PART II - THE CONSTITUTIONAL PROBLEM

My research and analysis leads me to conclude as follows:

I The *Canadian Charter of Rights and Freedoms* (the "Charter") ss. 1,3 and 15 will probably not present any obstacle to the creation of a Mi'kmaq seat. The sections read as follows:

> 1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
>
> 3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.
>
> 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
>
> (2) Subsection (1) does not preclude any law, program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

II The *Constitution Act, 1867* (U.K.) 30 & 31 Vict., c.3 (the "*Constitution Act, 1867*") ss.91 and 92 will probably not permit the Province to create a native seat on its own, and without the co-operation and participation of the Federal Government. Sections 91 and 92 of the *Constitution Act, 1867* read in part as follows:

> "91 It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, in relation to all matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all matters coming within the Classes of Subjects next herein-after enumerated: that is to say, -

24. Indians, and Lands reserved for the Indians.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say, -

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.

13. Property and Civil Rights in the Province.

16. Generally all Matters of a merely local or private Nature in the Province.

Recently the Supreme Court of Canada canvassed what is meant by "the right to vote" in s.3. Madame Justice McLachlin, on behalf of a strong majority, stated as follows in *Re Provincial Electoral Boundaries* (Sask) (1991), 127 N.R. 1 at pp.14-16:

> " It is my conclusion that the purpose of the right to vote enshrined in s.3 of the **Charter** is not equality of voting power per se, but the right to "effective representation". Ours is a representative democracy. Each citizen is entitled to be represented in government. (emphasis added by McLachlin, J.)
>
> ...
>
> But parity of voting power, though of prime importance, is not the only factor to be taken into account in ensuring effective representation. Sir John A. Macdonald in introducing the **Act to re-adjust the Representation in the House of Commons**, S.C. 1872, c.13, recognized this fundamental fact:
>
> > "... it will be found that ... while the principle of population was considered to a very great extent, other considerations were also held to have weight; so that different interests, classes and localities should be fairly represented, that the principle of number should not be the only one."
>
> Notwithstanding the fact that the value of a citizen's vote should not be unduly diluted, it is a practical fact that effective representation often cannot be achieved without taking into account countervailing factors.

...

> Secondly, such relative parity as may be possible of achievement may prove undesirable because it has the effect of detracting from the primary goal of effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. These are but examples of considerations which may justify departure from absolute voter parity in the pursuit of more effective representation; the list is not closed.
>
> It emerges therefore that deviations from absolute voter parity may be justified on the grounds of practical impossibility or the provision of more effective representation. Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced. I adhere to the proposition asserted in **Dixon**, supra at p.414, that "only those deviations should be admitted which can be justified on the ground that they contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographic factors within the territory governed"."

In the above case, the majority of the Supreme Court allowed the appeal and concluded that the electoral boundaries created by the *Representation Act*, 1989, s.s.1989-90, c.R-20.2, did not violate the right to vote enshrined in s.3. The Court thus allowed deviations between seats within plus or minus 25% of the provincial average. The Supreme Court did not deal with the issue of Saskatchewan's two northern ridings which vary from the provincial quotient by up to 50% as no issue was taken on the point. The Saskatchewan Court of Appeal had permitted the northern ridings under s.1 of the Charter finding that special treatment for northern ridings was constitutionally acceptable.

> "We hold that the two northern constituencies stand on a different footing. We note that all parties, except for Mr. Kowalchuk who advocated absolute equality, agreed that the first branch of the s.1 test had been met in relation to the northern seats. The extraordinary or special circumstances of this region demonstrate a "pressing and substantial" need for two northern constituencies. The second branch of the test is also met. The concept of two northern constituencies is "rationally connected" to

> the notion that this area needs effective representation. The exigencies of geography, very sparse population, transportation and communication warrant deviation from the ideal. We have no difficulty concluding that the departure from the concept of equality of voting power in s.3 is in these instances justified under s.1." [*Ref. re Provincial Electoral Boundaries*, [1991] 3 W.W.R. 593 (Sask.C.A.) at p.617]

An analogous case could be made for the native seat in Nova Scotia. Furthermore, to harken back to the words of Madame Justice McLachlin, "community history, community interests and minority representation" would seem to bring to mind the native seat, reflective "of our social mosaic". In sum, it is fair to summarize that not only the provisions of Charter ss.1 and 3, but also s.15(2) could be employed to sustain a native seat. Section 15 reads as follows:

> 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
>
> (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Reference to s.15(2) reveals an affirmative action provision in the Charter. It is submitted that this section would be interpreted to uphold the establishment of a native seat. That is, notwithstanding that *prima facie* a native seat is discriminatory pursuant to s.15(1), the companion s.15(2) is designed to provide for groups disadvantaged because of reasons set out in s.15(2), such as the Mi'kmaq people in Nova Scotia.

Based on the foregoing, it is submitted that a native seat in the Nova Scotia House of Assembly could withstand Charter scrutiny.

The Province has exclusive jurisdiction to legislate its own electoral boundaries under

either s.92(16) of the *Constitution Act, 1867* ("generally all matters of a merely local or private nature in the province") or under s.45 of the *Constitution Act, 1982* (i.e., respecting "laws amending the constitution of a province"). Section 45 of the *Constitution Act, 1982*, was formerly s.91(1) of the *Constitution Act, 1867*.

Section 91(24) of the *Constitution Act, 1867*, confers exclusive legislative authority on Parliament in "all matters" coming within the subject of "Indians, and lands reserved for the Indians". In *Millbrook Indian Band v. Northern Counties Tenancies Bd.* (1978), 84 D.L.R. (3d) 174 (N.S.S.C.,T.D.), Morrison, J. decided that the *Residential Tenancies Act*, 1970 (S.N.S.) c.13 had no application to Indian reserves because of s.91(24). Mr. Justice Morrison relied on *Cardinal v. A.-G. Alta.* (1973), 40 D.L.R. (3d) 553, per the majority decision of Martland, J. The following quotation is taken from *Millbrook*, supra, at pp.178-179:

> "In rendering his decision Mr. Justice Martland (*obiter dicta*) made the following comments as to his interpretation of s.91(24) of the *British North America Act*, 1867. Mr. Justice Martland said as follows at pp.559-60 of the decision:
>
> > "I am not prepared to accept this initial premise. Section 91(24) of the *British North America Act*, 1867, gave exclusive legislative authority to the Canadian Parliament in respect of Indians and over lands reserved for the Indians. Section 92 gave to each Province, in such Province, exclusive legislative power over the subjects therein defined. It is well established, as illustrated in *Union Colliery Co. of B.C. v. Bryden*, [1899] A.C. 580, that a Province cannot legislate in relation to a subject-matter exclusively assigned to the federal Parliament by s.91. But it is also well established that provincial legislation enacted under a heading of s.92 does not necessarily become invalid because it affects something which is subject to federal legislation. A vivid illustration of this is to be found in the Privy Council decision a few years after the *Union Colliery* case in *Cunningham et al v. Tomey Homma*, [1903] A.D. 151, which sustained provincial legislation, pursuant to s.92(1), which prohibited Japanese, whether naturalized or not, from voting in provincial elections in British Columbia.
> >
> > A provincial Legislature could not enact legislation in relation to Indians, or in relation to Indian reserves, but this is far from saying that the effect of s.91(24) of the *British North America Act*, 1867, was to create enclaves

> within a Province within the boundaries of which provincial legislation could have no application. In my opinion, the test as to the application of provincial legislation within a reserve is the same as with respect to its application within the Province and that is that it must be within the authority of s.92 and must not be in relation to a subject-matter assigned exclusively to the Canadian Parliament under s.91. Two of those subjects are Indians and Indian reserves, but if provincial legislation within the limits of s.92 is not construed as being legislation in relation to those classes of subjects (or any other subject under s.91) it is applicable anywhere in the Province, including Indian reserves, even though Indians or Indian reserves might be affected by it. My point is that s.91(24) enumerates classes of subjects over which the federal Parliament has the exclusive power to legislate, but it does not purport to define areas within a Province within which the power of a Province to enact legislation, otherwise within its powers, is to be excluded."

Given the above as applied to our fact situation, one cannot emphatically say that the creation of a native seat by the Province alone would be constitutionally invalid. In the quoted remarks of Martland, j. the case of *Cunningham v. Tomey Homma* is cited as an example of jurisprudence illustrating that provincial legislation does not necessarily become invalid because it affects something under s.91 of the *Constitution Act, 1867*. This case draws mention in Kenneth Lysyk's paper *The Unique Constitutional Position of the Canadian Indian*, C.B.R. 513, Vol. 45, 1967, wherein the author states at pp.536-537:

> "It should be noted at once that the first and second propositions stated in the previous paragraph are no more than starting points in the constitutional analysis. A provincial statute which selects Indians for special treatment is not necessarily *ultra vires;* nor is a provincial law of general application necessarily valid and applicable to Indians of the province. In this connection some assistance can be drawn from the lines of cases concerning the position of other classes of persons within federal legislative authority. As to validity of a provincial law which is not of general application, reference might be made, once again, to the decision of the Privy Council in *Cunningham v. Tomey Homma*. In that case a naturalized British subject of Japanese origin, who was a "Japanese" as defined in the *Provincial Elections Act* of British Columbia, tested the validity of a provision in the Act which stipulated that:

> No Chinaman, Japanese, or Indian shall have his name placed on the register of voters for any electoral district, or be entitled to vote at any election.

It was held that section 91(25) of the *British North America Act*, which assigns to the Parliament of Canada authority over "Naturalization and Aliens", did not prevent the province from denying the franchise to aliens or naturalized subjects. The reasons given by the Privy Council suggest that an Indian attacking the provincial Act, and relying on section 91(24) of the *British North America Act*, would have been equally unsuccessful. Provincial legislation supported under section 92(1) of the *British North America Act* (which gives the province power to amend the constitution of the province, notwithstanding anything in the Act) was therefore upheld, though it discriminated against a class of person over whom legislative authority lay with Parliament. Discrimination against such a class of person which is of different kind or degree may indeed be *ultra vires* the province. The present point is simply that while assignment of legislative authority to Parliament over a class of persons carries, at a minimum, the power to define the status of such persons, it does not *per se* exclude all provincial legislation purporting to attach consequences to that status."

Interestingly, the *Cunningham v. Tomey Homma* case was not raised in *R. v. Sutherland, Wilson and Wilson* (1980), 112 D.L.R. (3d) 374 (S.C.C.) which held that s.49 of Manitoba's *Wildlife Act* was *ultra vires* the province because it singled out and thus was a law in relation to native people. Dickson, J., speaking for an unanimous Court stated as follows at p.378:

> "I do not think there is any doubt s.49 of the *Wildlife Act* is beyond the constitutional competence of the Province of Manitoba and *ultra vires* in entirety. The provision cannot purport to be a law of general application. Section 49 has effect only against Indians and its sole purpose is to limit or obliterate a right Indians would otherwise enjoy. Indians are singled out for special treatment. While provincial law may apply to Indians, it can only do so "... as long as such laws do not single out Indians nor purport to regulate them *qua* Indians...": see *Four B. Manufacturing Ltd. v. United Garment Workers et al.* (1980), 102 D.L.R. (3d) 385 [at p.398], 30 N.R. 421. This legislation is clearly "in relation to" one class of citizens in object and purpose and is, therefore, in constitutional derogation of the right of the federal power to legislate in respect of Indians and lands reserved for the Indians

> under head 24 of s.91 of the *British North America Act*, 1867: see *C.P.R. v. Notre Dame de Bonsecours Parish*, [1899] A.C. 367; *Kruger and Manuel v. The Queen* (1977), 34 C.C.C. (2d) 377, 75 D.L.R. (3d) 434, [1978] 1 S.C.R. 104."

Based on Mr. Justice Dickson's words, provincial legislation singling out Indians for a native seat, would appear to be invalid. This is the conclusion of Patrick Macklem whose recent article, "First National Self-Government and the Borders of the Canadian Legal Imagination", (1991) 36 McGill, L.J. 382 assessed Mr. Justice Dickson's decision as follows at p.418:

> "To this end, a province is not entitled to single out native people and treat them differently than nonnative people. Legislation to this effect would be in pith and substance legislation in relation to "Indians" and therefore *ultra vires* the province. This is illustrated by *R. v. Sutherland* ..."

The author went on to analyze more recent Supreme Court decisions at pp.419-420:

> "Though a province is entitled to treat native people the same as nonnative people and regulate native affairs by laws of "general application", the Court noted in *Kruger and Manuel* that provincial authority in this regard is not unlimited. In the words of Dickson C.J., "[t]he line is crossed ... when an enactment, though in relation to another matter, by its effect, impairs the status or capacity" of native people. A similar test was articulated by Justice Beetz in *Four B Manufacturing v. United Garment Workers of America*, where he spoke of provincial laws of general application which touch on matters which are "inherently Indian" or "regulate Indians *qua* Indians". In such cases, the law, despite its general applicability, will be held to be inapplicable to native people.

In *R. v. Isaac* (1975), 13 N.S.R. (2d) 460 (N.S.S.C.,A.D.), MacKeigan, C.J.N.S., cited the "Indian *qua* Indian" language at p.468:

> "... a provincial law is excluded from operation if it deals with any Indian *qua* Indian, or with Indian reserve land *qua* land, or perhaps, more accurately, if it is "legislation in relation to Indian status or Indian land rights" (Ritchie, J., in *The Natural Parents v. The Superintendent of Child Welfare et al.*, 6 N.S.R. 491." (emphasis added by MacKeigan, C.J.N.S.)

Given this backdrop, if the Nova Scotia Government were to legislate a native seat under the authority of s.45 of the *Constitution Act, 1982* and s.92(16) of the *Constitution Act, 1867*, there is a very real chance that a court would render it constitutionally invalid. That is, such a seat would single out natives and deal with natives *qua* natives and affect natives differently from nonnatives. Although there is the line of authority from the Privy Council's decision in *Cunningham v. Tomey Homma*, the Provincial Government would be taking a constitutional leap to rely on this decision in the face of more recent Supreme Court of Canada verdicts.

A safer course, immune from constitutional challenge, would be for the Province to pass provincial legislation enacting a native seat and have it referentially incorporated through adoption by the Parliament of Canada. In short, the establishment of a native seat is the sort of undertaking that should be approached by way of federal-provincial co-operation. This is the only route that will prevent *Constitution Act, 1867* division of powers challenges that could effectively tie the issue up in the courts for several years.

PART III - CONCLUSIONS

The constitutional validity of unilateral action by the Provincial Government to create a distinct Mi'kmaq seat for Indians and about Indians should be judicially determined, either by a reference by the Province under the *Constitutional Questions Act*, R.S.N.S., 1989, c.89 or by co-operative action between the Provincial and Federal Governments.

It is my opinion that there is enough uncertainty about the answer to this question that it must be as definitively determined as possible before such a seat is created.

The consequences of proceeding in a way that the Province exceeds its constitutional authority could be extremely serious. Actions taken by a Legislative Assembly containing what may be determined to be an improperly elected member could be set aside after people had relied on the validity of the action.

Such consequence could be so serious that sufficient time should be taken now to determine the question as here suggested.

The Commission has two alternatives:

(1) To determine the description of the Mi'kmaq seat and recommend its establishment only if and when the constitutional question is determined; or

(2) To point out these difficulties to the Provincial Government and seek permission to suspend consideration of the Mi'kmaq seat until the constitutional question is determined.

Dated at Halifax, Nova Scotia, this 3rd day of January, 1992.

A. William Cox

A. William Cox, Q.C.

APPENDIX C(II)

BRUCE H. WILDSMITH, B.Sc., LL.B., LL.M. (HARV.)
BARRISTER & SOLICITOR

33 WALTON DRIVE
HALIFAX, NOVA SCOTIA
B3N 1X6

January 14, 1992

Ronald G. Landes
Chairperson
Provincial Electoral Boundaries Commission
P.O. Box 276
Halifax, NS
B3J 2N7

Dear Mr. Landes:

Re: Constitutionality of Mi'kmaq Seat

I am writing on behalf of the Union of Nova Scotia Indians in response to the legal opinion provided to you by A. William Cox, Q.C., legal counsel to the Commission, in respect of the constitutionality of a Mi'kmaq seat. The question to be addressed is whether legislation enacted by the Nova Scotia House of Assembly adding a seat to the House, and specifying that the seat be filled by a Mi'kmaq person, would be unconstitutional.

In my opinion such legislation would be much more likely to be found constitutional by the courts, and within the powers of the Province, than not.

The legislation would be supported by s. 45 of the Constitution Act, 1982, which provides, in its relevant respects, as follow:

> 45. ... [T]he legislature of each province may exclusively make laws amending the constitution of the province.

Note that the section used the word "exclusively" [as do ss. 91 and 92]. Section 45 should be cross-referenced with s. 88 of the Constitution Act, 1867, which provides that the "constitution of the Legislature" of Nova Scotia shall continue as it exists at Confederation until duly altered. Clearly the composition of the House of Assembly would be part of the constitution of the Province and a subject of exclusive provincial jurisdiction.

The opinion provided by Mr. Cox is consistent with the above as far as it goes. The rub for him comes from creating a specific seat that can only be filled by a Mi'kmaq.

The first part of the analysis in Mr. Cox's opinion deals with the Canadian Charter of Rights and Freedoms, in particular the equality right guarantee in s. 15. I agree with his ultimate outcome, i.e. that the Mi'kmaq seat would withstand Charter scrutiny. I do believe, however, that there are more reasons for thinking legislation creating the Mi'kmaq seat would survive Charter analysis than are contained in his opinion. For the present at least, we need not be concerned about that.

The main object of my concern with his opinion is the conclusion at p. 10 that "provincial legislation singling out Indians for a native seat, would appear to be invalid" and at p. 11 that "there is a very real chance that a court would render it [legislation creating a Mi'kmaq seat] constitutionally invalid." This opinion is based on a traditional division of powers analysis concerning the powers of the Federal Parliament under ss. 91 and of the provinces under 92 of the Constitution Act, 1867 and, in this case, s. 45 of the Constitution Act, 1982. In particular it is based on the fact that under s. 91(24) the federal Parliament has exclusive legislative jurisdiction in relation to "Indians, and Lands reserved for the Indians".

In a division of powers analysis the central question is always the same: how do you characterize for constitutional purposes the legislation under scrutiny? This is also variously described as determining what the statutory provision is "in relation to", or what is the "pith and substance", or dominant aspect, or leading feature, or constitutional value of the provision being judged. In relation to the Mi'kmaq seat, the question to ask is this: when Nova Scotia legislates to add a Mi'kmaq seat to the House of Assembly, is it legislating in relation to Indians, or is it legislating in relation to the composition of the House and the constitution of the Province? Or, to put the same question in the above-noted language, is the pith and substance of the legislation Indians or is it representation in the House of Assembly? In my view the answer is the House of Assembly and the constitution of the Province. That is the fundamental aspect of the matter and the true constitutional value of the legislation.

It is true that such legislation will have some impact on Indians -- after all the seat is created only for Indians. One could say that the legislation singles Indians out for special treatment. However, in constitutional law language, this impact or effect is likely going to be judged as incidental or ancilliary to the main purpose, which is creating seats and representation in the House. It is a basic principle of constitutional law that legislation whose pith and substance is within the enacting legislature's authority, may have an incidental or secondary effect or impact on something within the other level of government's jurisdiction.

Mr. Cox's opinion does not directly address this characterization question, i.e. what would the legislation be "in relation to", what would the pith and substance be for constitutional purposes? Rather his opinion focusses on the concept of "singling out", under which a province treats a federal entity differently than provincial entities. As Dickson, J. puts it in the quote on p. 9 of Mr. Cox's opinion: "While provincial law may apply to Indians, it can only do so ' ... as long as such laws do not single out Indians nor purport to regulate them qua Indians." However, this notion of singling out should be read in context and as part of the larger principle of the essential core.

In context, Dickson J.'s comment is preceded by the following [see Cox p. 9]: "Section 49 [of the Wildlife Act] has effect only against Indians and its sole purpose is to limit or obliterate a right Indians would otherwise enjoy. Indians are singled out for special treatment." Thus, in context, when Dickson J. speaks about the concept of singling out for special treatment being unconstitutional, he is speaking about treatment that limits or obliterates rights, i.e. that treats Indians detrimentally and to their prejudice. I am not aware of any authoritative decisions by the Supreme Court where provincial legislation conferring benefits to Indians has been found be unconstitutional on this basis. Thus I suggest a vital part of the context for the notion of singling out for special treatment is the fact of treating the federal entity in a special way to its detriment. That clearly is inapplicable to the Mi'kmaq seat.

The idea of singling out federal entities for special treatment is, I suggest, part of a larger constitutional concept to the effect that each of the heads of federal power in s. 91 has an essential core or integral element that is beyond the reach of provincial legislation, even through the incidental effect or ancilliary doctrine. These ideas have not been authoritatively rationalized by the Supreme Court, but there has been in the last several years a number of cases espousing the integral element notion. Thus it has for a long time been the case that provincial legislation cannot sterilize or undermine the essential status and capacities of a federally incorporated company. This I think is now part of the notion that providing for the status and capacities of federal companies is an integral element of the legislative power to create federal companies. In relation to Indians, this idea is probably captured in the phrase "Indians qua Indians", i.e. Indians in those fundamental characteristics that are an essential part of being an Indian. On this analysis, it is easy to see why Dickson J. said and decided as he did; the same may be said for MacKeigan, C.J.N.S. in Isaac (a case I argued before the Appeal Division in 1975). For provinces to deprive Indians of the ability to hunt is to legislate about an integral element of the federal power over Indians. To put an Indian into the Nova Scotia Legislature is to legislate about a representation problem in the House.

To summarize, in my opinion provincial legislation creating a Mi'kmaq seat in the House of Assembly would be characterized as being for constitutional purposes about representation of the people in and the composition of the House, part of the constitution of Nova Scotia, and not in relation to Indians. The reference to Indians is a secondary characteristic and would be regarded in constitutional language as being incidental or ancillary to the main purpose. The main danger is that the secondary, or incidental, or ancillary component would be seen as invading the core of the federal power over Indians. However, this is a very remote possibility because the legislation would, if anything, be strengthening the status and capacities of Mi'kmaq and not undermining these attributes to their detriment; it would not be legislating about Indians qua Indians but redressing a representation problem.

Another way of seeing the flaw in the opinion finding provincial action invalid is to ask whether the Federal Parliament could create the Mi'kmaq seat in the Nova Scotia legislature. It

is a fundamental constitutional principle that all legislative powers are distributed between the two levels of government; this the principle of exhaustiveness. If Parliament passed legislation mentioning a provincial legislature and specifying that Indians could (let alone must) be represented therein by a separate seat, would it pass division of powers scrutiny? Absolutely not, because Parliament would be seen as legislating about the composition of provincial legislative bodies. The Indian aspect would for Parliament be the tail that could not wag the dog (the provincial legislature and constitution). Similarly, when the province legislates to allow a Mi'kmaq seat, the Indian aspect is the tail, i.e. the secondary aspect, and the provincial House and constitution is the main body, or pith and substance.

A second area of disagreement with Mr. Cox's opinion is over the proposed solution to the supposed incapacity of the province: having provincial legislation enacting a native seat "referentially incorporated through adoption by the Parliament of Canada" (p. 11). This is an attempt to accomplish through co-operative action by both senior governments what could not be accomplished by the Province (or, for that matter, the Federal government) acting alone. In my opinion the idea is fundamentally flawed and does not itself withstand constitutional law scrutiny.

The flaw is this: the proposed solution is premised on "provincial legislation enacting a native seat". One cannot, having just explained in the opinion that such legislation is constitutionally invalid, suddenly make what is unconstitutional valid by federal adoption. Constitutional jurisdiction cannot be created or acquired by consent. The provincial legislation must stand on its own; its constitutionality must be tested against the Constitution itself, in particular s. 45 of the Constitution Act, 1982. What the federal government does is not relevant to the question of provincial constitutionality. Thus, if the province cannot validly enact a law in the first instance, there is nothing for the federal Parliament to adopt. The concept of adoption is premised on the existence of valid provincial legislation that can stand on its own.

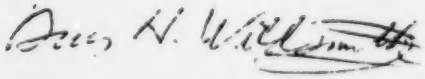
It may be possible to benefit from supporting federal legislation, if, for example, one were of the view that Indians lacked the legal capacity to serve as members of a legislative assembly. However, this is unlikely the case since aboriginal people have the capacities of other natural persons and have in fact been elected and served in legislative bodies, e.g. Mr. Harper in Manitoba. Thus it is difficult to see what federal legislation would contribute. Certainly the idea of adoption and referential incorporation would not work.

One further matter should be addressed. Mr. Cox suggests that the issue ought to be clarified by a constitutional reference to the Appeal Division of the Supreme Court of Nova Scotia. Such a process is a common one with respect to constitutional questions over proposed legislation, though governments are very reluctant to engage in the process (the Mi'kmaq community has repeatedly requested both the Province and the Federal government to make References in relation to Mi'kmaq treaty rights and land claims and have been refused). As the above opinion suggest, we do not feel a Reference is necessary. However, a Reference would certainly settle any lingering doubts. If you decide such a Reference would be useful, I suggest

that it would be vital to have a proposed Bill drafted first, or least to have specific proposals on the Mi'kmaq seat indicating what would be done and how it would work. Secondly, the UNSI should be a full party to the Reference and able to argue for the constitutionality of the Mi'kmaq seat.

Mr. Cox, in support of the Reference process, points out the danger of a House improperly constituted. He suggests actions taken could be set aside after people had relied on the legislature. This danger is something that might be explored in more depth; my views on the matter are still preliminary but I wonder how great the danger really is. For example, it often happens that legislation is declared unconstitutional and set aside, sometimes many years after people have governed their affairs accordingly. Courts lately have given governments a period of time to correct the mistakes of the past so that legal anarchy does not exist, e.g. Manitoba was given time to translate its statutes into French when the Supreme Court decided the Manitoba constitution required them to be in both languages. As well, I think that if the Mi'kmaq seat was found unconstitutional after the member had sat and participate the legislature could, after the member was removed, simply ratify all the actions taken improperly and give the legislation retrospective or retroactive effect. Thus I am not convinced that the danger is that great; I certainly urge the Commission not to delay in its work pending a Reference. There is, in my view, no substantial reason to await the final outcome of a Reference (which could go from the Appeal Division to the Supreme Court of Canada) before acting.

Yours faithfully,



Bruce H. Wildsmith

COX DOWNIE

APPENDIX C(iii)

BARRISTERS AND SOLICITORS

Ronald J. Downie, Q.C.
Robert G. MacKeigan, Q.C.
Gregory I. North
Warren K. Zimmer
Anthony L. Chapman
Leslie J. Dellapinna
Alan J. Dickson
A. James Musgrave
Brian A. Tabor
Judith F. Ferguson

George M. Mitchell, Q.C.
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Douglas C. Campbell, Q.C.
Thomas P. Donovan
Paul C. Martin
Brian W. Downie
Lorraine P. Lafferty
K. Michael Tweel
John H. Graham
Karen A. Fitzner

David McD. Mann, Q.C.
Daniel M. Campbell, Q.C.
Daniel F. Gallivan
Frederick P. Crooks
Michael E. Dunphy
Jamie S. Campbell
Jan E. McKenzie
Jocelyn M. Campbell
Philip J. Jenkins
Daniel W. Ingersoll

John M. Barker, Q.C.
John Arnold
Peter W. Gurnham
Terry L. Roane
J. Craig McCrea
Robert W. Carmichael
D. Kevin Latimer
Jonathan R. Gale
Margaret L. MacInnis
Marc J. Belliveau

Counsel
A. William Cox, Q.C.

1100 Purdy's Wharf Tower One
1959 Upper Water Street
P.O. Box 2380
Halifax, Nova Scotia
Canada B3J 3E5

Telephone (902) 421-6262
Facsimile (902) 421-3130

January 22, 1992

Dr. Ronald G. Landes
Chairperson
Provincial Electoral Boundaries Commission
1724 Granville Street
3rd Floor
P. O. Box 276
Halifax, NS
B3J 2N7

Dear Dr. Landes:

Re: Bruce H. Wildsmith's January 14, 1992 Letter Concerning the Constitutionality of a Mi'kmaq Seat

I am writing in response to the above-noted letter wherein Professor Wildsmith comments on my January 3, 1992, legal opinion to the Provincial Boundaries Commission (the "Commission") with reference to the creation of a Mi'kmaq seat in the Nova Scotia House of Assembly.

At the outset, I point out that whereas I was asked to investigate and report to the Commission on "the legal implications and problems involved" in creating such a seat, Professor Wildsmith has responded "writing on behalf of the Union of Nova Scotia Indians". As such, he has provided a forceful opinion in arguing for the constitutional validity of Nova Scotia legislation creating a Mi'kmaq seat. It is submitted that equally persuasive arguments might be presented on behalf of other "interested parties" not the least of which might include the Government of Canada. In short, I take the position that whereas my opinion offered a balanced appraisal of the situation, the Wildsmith submission offers an example of the sort of legal argument that would be made on behalf of those in support of a native seat.

In responding to the Wildsmith letter, I do not propose to advance a contrary case but merely to re-emphasize the difficulties in validly establishing a Mi'kmaq seat. In sum, Wildsmith's letter does not cause me to deviate from my initial opinion that certain difficulties should be resolved before proceeding.

Much of Professor Wildsmith's letter deals with analyzing the "pith and substance" of the establishment of a Mi'kmaq seat. He asks the question at page 2 of his letter: "... is the

pith and substance of the legislation "Indians" or is it "representation in the House of Assembly"?", to which he answers: "In my view the answer is the House of Assembly and the constitution of the Province. That is the fundamental aspect of the matter and the true constitutional value of the legislation." In my view, this conclusion is debatable. That is, notwithstanding Wildsmith's representations to the contrary, there may exist an equally strong case for saying that the pith and substance of the legislation is "Indians". Without delving into the details of this argument, suffice it to say, an argument may be advanced to say that such a seat singles out Indians for special treatment, and that that is the "pith and substance" of such legislation.

With reference to the pith and substance debate, I enclose for your perusal a recent decision of the Nova Scotia Court of Appeal in *R. v. Morgentaler* (1991), 83 D.L.R. (4th) 8 (N.S.S.C.,A.D.). In this decision which you are perhaps familiar with, the Court of Appeal by a four to one majority declared provincial legislation (the *Medical Services Act*, R.S.N.S. 1989, c.9) to be pith and substance criminal law and a colourable attempt by the legislature to invade the exclusive jurisdiction of Parliament with respect to criminal law. While the facts clearly deviate from our situation, I nonetheless offer this case as an example of how the pith and substance debate is rarely definitive. Indeed, this case is now on appeal to the Supreme Court of Canada.

Professor Wildsmith makes a compelling argument at page 3 of his letter when he makes the point that he is unaware of any Supreme Court decisions where provincial legislation conferring benefits to Indians has been found to be unconstitutional on this basis. I do not mean to question Wildsmith's personal beliefs or those of the Union of Nova Scotia Indians, but I would submit that there may be an argument to the effect that such legislation does not confer benefits. For example, Patrick Macklem, whose article I refer to in my legal opinion, defined native self-government as follows in the article:

> "Self-government, broadly speaking, refers to the desire of native people to have control over the ability to define their own individual and collective identities.
>
> ...
>
> A workable definition of self-government that avoids the emptiness of generality without descending into the politics of specifics, however, is that native self-government at least refers to the need for a territorial base on native land, some forms of administrative and political structures and institutions for the airing of native voices and political decision making, the transfer of jurisdictional responsibilities from Parliament to native people, the ability of native people to organize their societies and pass laws governing their lives free from federal or provincial interference, and access to sufficient fiscal resources to meet these responsibilities."

Given this definition, one cannot be certain that the creation of a Mi'kmaq seat is even on the road to what may be the Mi'kmaq ultimate objective - self-government. In sum, certain native representatives might take issue with the notion that a Mi'kmaq seat confers benefits.

At pages 4 and 5 of his letter, Professor Wildsmith states that my opinion is flawed with respect to the issue of referenial incorporation. By way of comment, I wish to underscore that my instructions were not to arrive at a definitive solution to the problems involved in creating a Mi'kmaq seat in Nova Scotia. I am sure that Professor Wildsmith would agree that the subject of referenial legislation is by no means absolute. I need only point to Peter Hogg's text, *Constitutional Law of Canada* (2nd ed., 1985) at pp.300-303 wherein the topic is discussed. After reviewing several of the cases on the topic, the author provides the following footnote at p.303:

> "Cf the doctrine of "facts of independent significance" which has been recognized by American writers on the law of wills; such facts do not need to satisfy the rules for a valid incorporation by reference: see Atkinson, *Law of Wills* (2nd ed., 1973), 394. Note, however, that in practice if not in theory the federal adoption of provincial law in the federal *Motor Vehicle Transport Act* (the Act upheld in *Coughlin*) does enlarge the powers of the provincial Legislatures. In *R. v. Smith* [1972] S.C.R. 359, 2 S.C.R. 621, the Court upheld the Alberta transport board's restriction on a trucking activity in British Columbia. The federal adoption enabled Alberta law to discriminate against interprovincial transportation in *Smith*, and to have extraterritorial effect in *National Freight Consultants*. In the first edition of this book (1977), at pp.231-232, I argued that *Smith* was wrongly decided (*National Freight Consultants* had not then been decided), but perhaps the decisions can be explained on the basis that the federal adoption does not simply direct the application of provincial law by the board, but converts the provincial law into federal law and thus frees the provincial law from the constitutional constraints on provincial legislative power: see Gilbert, "*Judicial Interpretation of the Australian and Canadian Constitutions*, 1867-1982".

Returning to my original letter, I would point out that the broader thrust of my comments in paragraph 2 at page 11 were that "the establishment of a native seat is the sort of undertaking that should be approached by way of federal - provincial co-operation." I stand by this opinion and would only add that Wildsmith's comments serve to underscore the importance of mutual co-operation between the two levels of government in this regard.

Towards the close of his letter, Professor Wildsmith acknowledges that a constitutional reference to the Appeal Division of the Supreme Court of Nova Scotia "would certainly settle any lingering doubts" vis a vis a Mi'kmaq seat. I do not take issue with this statement and

concur with his remarks as to drafting a proposed Bill first and having the Union of Nova Scotia Indians as a full party to the Reference.

At the conclusion of his letter, Wildsmith indicates that my remarks concerning an improperly constituted House may be overly cautious in light of recent court decisions. While I would concede that his remarks are persuasive, there is no guarantee that actions taken by a legislative assembly containing what could be determined to be an improperly elected member could not be set aside. For example, to say that a legislature could "simply ratify all the actions taken improperly and give the legislation retrospective or retroactive effect" may be ignoring the political realities in what could possibly be a minority House in the future.

Based on the foregoing, I would reiterate the two alternatives that I posed to the Commission in my letter of January 3, 1992, as follows:

1. to determine the description of the Mi'kmaq seat and recommend its establishment only if and when the constitutional question is determined; or

2. to point out these difficulties to the provincial government and seek permission to suspend consideration of the Mi'kmaq seat until the constitutional question is determined.

Yours very truly,

A. William Cox

AWC/ml
Encl.

1646 Barrington Street
PO Box 36, Halifax, NS B3J 2L4

Telephone: (902) 423-6361
Telecopier: (902) 420-9326

Barristers and Solicitors
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APPENDIX C(iv)

Charles W. Burchell, Q.C.
A. David MacAdam, Q.C.
Alan G. Hayman, Q.C.
Thomas J. Burchell, Q.C.
Robert L. Barnes
D. Bruce Clarke
Michael J. Wood

Wayne F. Howatt
J. Kevin Quigley
Nicholas P. Katsepontes
Brian E. Sharp
Leanne M. Todd
Karen A. Trenholm
John A. McKiggan

Associate Counsel: Bruce H. Wildsmith

BURCHELL MacADAM & HAYMAN

January 29, 1992

Mr. Ronald G. Landes
Chairperson,
Provincial Electoral Boundaries
Commission
P. O. Box 276,
Halifax, N. S.
B3J 2N7

Dear Mr. Landes:

RE: Implications of Mi'kmaq Seat
Our File No. 1001847

We are the solicitors for the Native Council of Nova Scotia and have examined on their behalf the implications of the creation of a Mi'kmaq seat in the Nova Scotia Legislature. In this regard we have reviewed the Legal Opinion submitted to the Provincial Boundaries Commission by A. William Cox, Q.C. dated January 3, 1992.

In our view, two issues must be examined:

1. Whether the proposed legislation to create a Mi'kmaq seat in the Nova Scotia Legislature is **intra vires** pursuant to the Constitution Act, 1867;

2. Whether the proposed legislation would offend any provision in the Charter of Rights and Freedoms (hereinafter referred to as the "Charter").

Constitution Act, 1867

Subsection 24 of Section 91 of the Constitution Act, 1867 gives the federal government exclusive jurisdiction with respect to all matters dealing with "Indians, and Lands reserved for the Indians". Section 88 of the Constitution Act, 1867 provides that:

> "The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act."

Reference can also be made to Section 45 of the Constitution Act, 1982 which states:

> "Subject to Section 41, the Legislature of each Province may exclusively make laws amending the Constitution of the Province."

Section 41 stipulates that the consent of the Senate and House of Commons is required where one seeks to amend, for example, the office of the Queen, the Governor-General and the Lieutenant-Governor of a Province. The amendments provided for in Section 41 are not relevant to the question of constitutionality of a Mi'kmaq seat in the Nova Scotia Legislature.

The critical issue to be determined is the characterization of the matter in issue. If the proposed amendment is classified as a matter pertaining to "Indians, and lands reserved for Indians", then such a matter is properly within the jurisdiction of the federal government. If, however, the proposed amendment can be characterized as dealing with "the constitution of the Province", then such a matter is properly within the provincial sphere.

As stated by Peter W. Hogg in Constitutional Law of Canada (2nd Edition) at Page 314:

> "The difficulty in identifying the "matter" of a statute is that many statutes have one feature (or aspect) which comes within a provincial head of power and another which comes within a federal head of power. Clearly, the selection of one or the other feature as the "matter" of the statute will dispose of the case; equally clearly, the Court in making its selection will be conscious of the ultimate result which is thereby dictated."

This is often referred to as "the pith and substance" doctrine.

It is our position that the "pith and substance" of the proposed legislation is the amendment to the Constitution of the Provincial Legislature of Nova Scotia. This is not to say that such legislation will not affect Indians, but rather that the pith and substance of the matter is the composition of the Legislature and not Indians per se.

The singling out of a particular class of persons is not necessarily determinative of the issue of the pith and substance of the matter. A case which is often referred to in this regard is the case of Cunningham v. Tomey Homma, [1903] A.C. 151, wherein the Privy Council upheld a British Columbia Statute which prohibited certain enumerated groups of people (including Indians) from voting in provincial elections. The Court held at page 156:

> "Could it be suggested that the Province of British Columbia could not exclude an alien from the franchise in that Province? Yet, if the mere mention of alienage in the enactment could make the law ultra vires, such a construction of Section 91, Subsection 25, would involve that absurdity."

The test as suggested by Mr. Cox at Page 9 of his submission wherein he cites the case of R. v. Sutherland, Wilson & Wilson (1980), 112 D.L.R. (3d) 374 (S.C.C.) provides that:

> "While provincial law may apply to Indians, it can only do so '...as long as such laws do not single out Indians nor purport to regulate them qua Indians...'; See Four B. Manufacturing Limited v. United Garment Workers et al (1980), 102 D.L.R. (3d) 385 at Page 398."

The Supreme Court of Nova Scotia examined the applicability of provincial statutes in relation to Indians in the case R. v. Isaac (1975), 13 N.S.R. (2d) 460 (App. Div.). MacKeigan, C.J.N.S. stated at page 468:

> "...a provincial law is excluded from operation if it deals with an Indian **qua** Indian, or with Indian reserve land **qua** land...".

The provision for a Mi'kmaq seat in the Legislature does not primarily deal with the character or capacity of being an Indian, but rather with a redistribution of representation within the Legislature to more properly reflect the issues and concerns of the native community.

It would be beyond the scope of federal jurisdiction to provide for legislation which designates a particular seat in the Nova Scotia Legislature to be held by a particular class of persons (ie. Mi'kmaq). The proposed legislation could only be validly

enacted by a provincial statute amending the composition of the Legislature.

The Applicability of the Charter

We have demonstrated that the proposed legislation is solely within the power of the Province. A secondary consideration is whether it offends the principles of the Canadian Charter of Rights and Freedoms. As cited in the submission by Mr. Cox, the relevant provisions to examine are Sections 1, 3, 15(1) and (2).

Section 3 provides that "every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein". As the proposed legislation would specifically designate a seat for a person of Mi'kmaq descent, to be voted on by persons of that same class, it may appear to offend Section 3.

Mr. Cox cites the case of Re Provincial Electoral Boundaries (Sask) (1991), 127 N.R. 1 wherein Madam Justice McLachlin stated at page 14:

> "It is my conclusion that the purpose of the right to vote enshrined in Section 3 of the Charter is not equality of voting power per se, but the right to 'effective representation'. Ours is a representative democracy. Each citizen is entitled to be represented in government. (Emphasis added by McLachlin, J.)"

We therefore agree with the conclusion of Mr. Cox that Section 3 would not be offended by the proposed legislation. Even if one were to determine that Section 3 had been violated, the legislation may be saved pursuant to Section 1 of the Charter (R. v. Oakes, [1986] 1 S.C.R. 103).

Section 15(1) states that "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability". Section 15(2) is referred to as the affirmative action provision which states that "Subsection (1) does not preclude any law, program or activity that has as its object the emelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic

origin, colour, religion, sex, age or mental or physical disability". It would appear that the proposed legislation would fit within the definition as provided for in Section 15(2), and therefore would not offend the principle of equality under the Charter.

Conclusion

It is submitted that the pith and substance of the proposed amendment is the restructuring of the Provincial Legislature and therefore within the power of the Province to enact. It would only be necessary to make an application to Court for a reference in this matter if the pith and substance of the legislation could not be ascertained. It is our submission that the legislation is undisputedly within the Province's legislative power. It seems unusual to suggest that the federal government could pass a law dictating the operation of the Nova Scotia House of Assembly. Therefore our client views such a reference as unnecessary and time consuming. It also appears clear that the proposed legislation does not contravene the Charter of Rights.

All of which is respectfully submitted,

BURCHELL, MacADAM & HAYMAN

D. Bruce Clarke

LAC/cb
cc: Native Council of Nova Scotia

ROSS
WOOD &
SCOTT
BARRISTERS & SOLICITORS

2695 Dutch Village Road
Suite 602
Halifax, Nova Scotia B3L 4T9

Tel.: (902) 455-9090 • Fax: (902) 455-1993

APPENDIX C(v)

February 12, 1992

Mr. Ronald G. Landes
Chairperson
PROVINCIAL ELECTROL
BOUNDARIES COMMISSION
P.O. Box 278
Halifax, NS
B3J 2N7

Dear Mr. Landes:

Re: Proposed Mi'kmaq Seat in House of Assembly

1. As solicitors for the Confederacy of Mainland Mi'kmaqs we have been instructed to respond to the opinion provided to the Provincial Boundaries Commission by Mr. A. William Cox, Q.C., which is dated January 7, 1992. Mr. Cox states that in his opinion:

> I The Canadian Charter of Rights and Freedoms (the "Charter") ss. 1,3 and 15 will probably not present any obstacle to the creation of a Mi'kmaq seat....
>
> II The Constitution Act, 1867 (U.K.) 30 & 31 Vict., c. 3 (the "Constitution Act, 1867") ss.91 and 92 will probably not permit the Province to create a native seat on its own, and without the co-operation and participation of the Federal Government....

2. He suggests that the creation of the seat be suspended until after "the constitutional question is determined". We totally disagree with Mr. Cox's opinion, take issue with his analysis, and submit that none of the courses of action put forward by him are warranted.

The Canadian Charter of Rights and Freedoms (the "Charter")

3. Mr. Cox goes to great length to examine whether or not the Charter could be a bar to enactment of Provincial legislation that would create a seat for a representative of the Mi'kmaq community. We are unable to understand why Mr. Cox would even suspect that the Charter could have been an obstacle. If anything the Charter would support the necessity for government action to empower Aboriginal Canadians and to ensure their participation in the structures of Government at all levels, and involvement in their own affairs as self-governing communities. We shall revert to the Charter in due course. For now, we wish to state that we disagree with the way Mr. Cox attempts to analyze and use the Charter.

Power to Amend Provincial Constitutions

4. The power of a Legislature to amend the Constitution of its Province, is to be found in section 45 of the Constitution Act, 1982. This section provides:

> 45. Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the Province.

5. Section 41 referred to by 45, has no relevance to the issue before your Commission and should not detain us. The predecessor to the present Section 45 of the Constitution Act, 1982, is the now defunct section 92(1) of the Constitution Act, 1867, which was repealed by section 53 of the Constitution Act 1982. Section 92(1) of the Constitution Act, 1867 was in the following language:

> 92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of Subject hereinafter enumerated; that is to say,-
>
> 1. The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of the Lieutenant Governor.

6. As stated above, however, section 92(1) of the Constitution Act of 1867 is no longer law. Unfortunately Mr. Cox and his Memorandum of opinion fail to recognize this fact and seem to treat 92(1) as the legislative basis for the amending power of Provincial Constitutions. They are wrong.

7. Section 45 of the Constitution Act, 1982 which is now the basis of the exclusive power to amend Provincial Constitutions has to be read together with section 88 of the Constitution Act, 1867, which is in these terms:

> 88. The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the union until altered under the authority of this Act.

8. It is our opinion that the Province of Nova Scotia, has Constitutional authority pursuant to section 45 of the Constitution Act, 1982, as read in conjunction with section 88 of the Constitution Act, 1867, to legislate with respect to the amendment of its Constitution, without "co-operative action between the Provincial and Federal Governments", as suggested by Mr. Cox.

9. In our opinion as well, the Legislature has to be seen as one of the arms of the Constitution of the Province of Nova Scotia. Since the Province has exclusive power to amend its Constitution, including the Legislature, it follows that the Province has power to exclusively amend the composition of the Legislature, including determining the number of seats that the Legislature should from time to time contain, determining qualification for membership in the Legislature, and setting any other attributes related to the seats or any of them, without seeking federal fiat.

Effect of Section 91(24) of Constitution Act, 1867

10. If the Province of Nova Scotia has the exclusive Constitutional authority to amend its Constitution, including authority to change the capacity and composition of its Legislature, is this power rendered nugatory by the fact that the amendment of the Constitution of the Province, as mandated by the Order-in-Council appointing the Provincial Boundaries Commission, would result in dedication of the additional legislative seat, to representation of the Mi'kmaq community?

11. Mr. Cox argues that it would. To arrive at this conclusion, he cites section 91(24) of the Constitution Act, 1867, and examines the literature and jurisprudence in which the section has been the subject of judicial construction and analysis. Section 91(24) of the Constitution Act, 1867 upon which Mr. Cox relies says:

> 91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and good Government of Canada, in relation to all matters not coming within the

> classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the Generality of the foregoing Terms of this section, it is declared that (not withstanding anything in this Act) the exclusive Legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say,-
>
> 24. Indians, and lands reserved for the Indians.

12. It should be remembered that head 24 of section 91 of the Constitution Act, 1867, deals with two and not one subject. It deals with "Indians" and "lands reserved for Indians." It has been stated by the late Chief Justice of Canada Bora Laskin, that the power exercisable by Parliament under Section 91(24) of the Constitution Act, 1867, in relation to "Indians", is comparable to the power that is exercisable by Parliament, under section 91(25) of the same Act. He wrote in Canadian Constitutional Law: Cases, Text and Notes on Distribution of legislative Power (Toronto: Carswell, 1969) p.550, that:

> Parliament's exclusive power under s.91(24) of the B.N.A. Act to legislate in relation to "Indians" as well as in relation to "lands reserved for the Indians", has, of course, historical roots, and in its specification that Indians as a class should be under federal protection it may be compared with exclusive federal power in relation to "aliens" under s. 91(25).

13. In Cunningham and Att. Gen for B.C. v. Tomey Homma and Att. Gen for Canada, [1903] A.C. 151, (P.C.) the Privy Council examined the power of the Legislature of British Columbia to exclude Chinamen, and Japanese from the electoral franchise in the Province, in exercise of the power of a Provincial Legislature to amend its Constitution under section 92(1) which was still law, as against the power of the Federal Government to exclusively legislate with respect to aliens pursuant to section 91(25) of the Constitution Act, 1867. The Federal government argued that the Provincial Elections Act, 1899, of British Columbia related to a matter, namely, "naturalization and aliens", which by virtue of section 92(25) had been placed under the exclusive legislative authority of Parliament, and was outside of the jurisdiction of the Legislature of the Province of British Columbia. The Privy Council rejected that contention, and ruled that the legislation was valid as an exercise of the power to amend the Constitution of the Province.

14. While we do not endorse the racism and prejudice that were the obvious motivation for the innocuous British Columbia **Provincial Elections Act, 1899**, and abhor the fact that the Privy Council failed to even comment on that racism, we suggest that the principle that was enunciated in **Cunningham**, is one that is sound as a matter of Constitutional construction, and one that has to date not been overruled expressly or otherwise. Section 92(1) of the **Constitution Act, 1867**, has of course been repealed and replaced by section 45 of the **Constitution Act, 1982**. We, however, do not feel that it makes a difference as far as the application of the **Cunningham** principle is concerned. Section 45 of the latter Act, is in **para materia** with section 92(1) of the former Act, that was repealed.

15. The cases cited by Mr. Cox do not address the issue as to the relationship between Section 91(24) of the Constitution Act, 1867, and section 45 of the **Constitution Act, 1982**. **Cardinal v. Att. Gen. Of Alberta** 40 D.L.R. (3) 553 (S.C.C.) dealt with the selling by an Indian, on a reserve of big game meat to a non-Indian, and the application a reserve, of provincial legislation prohibiting trafficking in big game. The court held that the effect of s. 91(24) was not to create enclaves in a Province, and that the provincial legislation in question in that case, being of a purely general nature applied. The case has little or no relevance to the issues that Mr. Cox suggests may be before your Commission.

16. **R. v. Isaac** 13 N.S.R. (2) 460, (N.S.S.C.A.D.) dealt with the issue as to whether or not the Nova Scotia **Lands and Forests Act**, which prohibited the possession of rifle in a forest, applied to an Indian in a forest on lands reserved for Indians. The Appeal Division of the Supreme Court of Nova Scotia held that it did not. In **Millbrook Indian Band v. Northern Counties Residential Tenancies Board, et al.** 84 D.L.R. (3) 174 (N.S.S.C.T.D.) Morrison J. on the Trial Division, had to decide whether or not the **Residential Tenancies Act**, S.N. 1970, c. 13. applied to a landlord-tenant relationship on a reserve. He also held that it did not. Both **Isaac** and **Millbrook Indian Band** were decided on the basis that the laws in question were land use laws that, even though validly enacted by the Province, had no application to lands reserved for Indians. They are of limited help to the Commission.

17. In our opinion if the Province has the constitutional authority to create an additional seat or seats in its Legislature as we have demonstrated, the law creating the seat would not be rendered unconstitutional by the fact that the seat thus created would be dedicated for the use of a Mi'kmaq Member. In **R. v. Sutherland, Wilson and Wilson** (1980) 113 D.L.R. (3) 374, (S.C.), Dickson J., speaking for a unanimous court on the issue of the validity of the **Wild Life Act of Manitoba**, R.S.M. 1970, c. N30, said (p. 378):

> I do not think there is any doubt s. 49 of the **Wild Life Act** is beyond the constitutional competence of the province of Manitoba and **ultra vires** in entirety. Section 49 has effect only against Indians and its sole purpose is to limit or obliterate a right Indians would otherwise enjoy. Indians are singled out for special treatment. While provincial law may apply to Indians, it can only do so "...as long as such laws do not single out Indians nor purport to regulate them qua Indians...": see **Four B. Manufacturing Ltd. v. United Garment Workers et al.** (1980) 102 D.L.R. (3) 385 at 398, 30 N.R. 421. This legislation is clearly "in relation" to one class of citizens in object and purpose and is, therefore, in constitutional derogation of the right of the federal power to legislate in respect of Indians and lands reserved for the Indians under head 24 of s. 91....

18. In the **Isaac** case cited earlier, MacKeigan C.J.N.S. said, supra, at p. 468:

> ...a provincial law is excluded from operation if it deals with an Indian qua Indian, or with Indian reserve land qua land, or perhaps, more accurately, if it is "legislation in relation to Indian status or Indian land rights"....

19. In our submission, such would not be the effect of any legislation dedicating a seat specifically for Mi'kmaq representation. In our view, if any singling out were to be identified, it would be the seat thus dedicated, and not the Mi'kmaq people, and this would not be unconstitutional. Would it be then that the dedication of a seat could be the subject of a **Charter** challenge by non-Mi'kmaq Nova Scotians alleging discrimination or some other cause of action under the **Charter**? It would appear that the danger lies more in the dominant community in Nova Scotia, oblivious of the systemic exclusion from power and political representation, which the Mi'kmaq people have suffered from confederation, attempting to use the **Charter** to invalidate the legislation.

20. In our view, however, a purposeful interpretation of the **Charter** would yield a result that would support the legislation. While we think that Mr. Cox's analysis and vision as to what role the **Charter** would assume is upside-down, we do feel that the end result would probably be the same, depending on the legislation and the form the challenge would take.

21. Furthermore we want to state that there is no basis for the alarmist picture painted by Mr. Cox, regarding the possible

consequences of an invalid legislation. There are lots of examples where courts have invalidated legislation or government action based thereon if warranted, but have taken steps to ensure that no prejudice is visited upon those that may have relied on the presumed validity of the legislation.

22. We conclude as follows:

[a] The Province of Nova Scotia has the exclusive constitutional authority and right to amend its constitution, including the composition and seating capacity of its Legislature;

[b] The Province of Nova Scotia has the constitutional authority and right to dedicate a seat or seats in the Legislature for the use of a Mi'kmaq Member or Members;

[c] Federal fiat is not required to effect the above, and, if purported to be granted would be superfluous;

[d] The Charter would not be an impediment, but could be utilised by extremist members of the dominant society to block legislation perceived as being too pro-Mi'kmaq.

[e] There is no basis for the alarmist picture painted by Mr. Cox. A reference is totally unwarranted.

All of which is respectfully submitted.

Yours very truly,

ROSS WOOD & SCOTT

PER: E. ANTHONY ROSS

APPENDIX D: SUMMARY OF MEETING WITH THE MI'KMAQ COMMUNITY ON FEBRUARY 6-7, 1992

Report Prepared by Noel Doucette and Fred Wien, Conference Co-Chairs
(February 22, 1992)

I. INTRODUCTION

On Thursday February 6, 1992, Mikmaq leaders from all over Nova Scotia came to Truro for a two-day conference to discuss the issue of Mikmaq representation in the Nova Scotia House of Assembly. Despite a severe snow storm that made driving hazardous, especially in Cape Breton, some 92 people attended the meeting. They included band councillors and/or chiefs from 12 out of 13 Mikmaq bands, as well as executive members or other delegates from the Native Women's Association, the Union of Nova Scotia Indians, the Native Council of Nova Scotia, and the Mikmaq Grand Council (see list of those attending at end of report). In addressing the issues at hand, many made the point that they spoke as members of the Mikmaq nation, not as representatives of particular bands or organizations. They indicated that they came with a common purpose, to consider the matter of Mikmaq representation in the Nova Scotia Legislative Assembly and to make informed decisions that were consistent with Mikmaq aboriginal and treaty rights as well as being in the interests of future generations of Mikmaq people. The unity of the meeting was symbolized by the fact that all speakers, no matter what their point of view on specific issues, were applauded after they came to the microphone to make their presentations.

After hearing from several invited speakers and discussing the issues both informally and in plenary session, the meeting concluded with agreement that there is interest in having Mikmaq representation in the Nova Scotia House of Assembly. It was also agreed that more time is needed to consider the matter fully, and that further discussion needs to take place within Mikmaq communities and organizations in order to make sure that the Mikmaq people are fully informed about the issues that need to be decided, and that they have an opportunity to give their views. More time is required to reach a consensus on the important issues concerning representation in the Legislature.

II. BACKGROUND TO THE CONFERENCE

In July of 1991, a Select Committee of the Legislative Assembly of Nova Scotia recommended that a Provincial Electoral Boundaries Commission be established to review the boundaries of the electoral constituencies of the Province. The Select Committee was chaired by Arthur Donahoe, Q.C., and included representatives of all three political parties. Its recommendations, which were subsequently approved by the Legislative Assembly, included the provision that the "Commission is to delineate electoral boundaries to achieve a 52-member Legislative Assembly with an additional member to represent the Mi'kmaq people in Nova Scotia". It was further recommended that "to facilitate a full appreciation of the wishes of the Mi'kmaq in Nova Scotia in this regard, the Provincial Boundaries Commission shall undertake a broad and thorough consultation with all native groups, and the native community at large, in this Province, before making its recommendation respecting a Mi'kmaq seat in the Legislature".

Once the Commission was established, it invited the major Mikmaq political organizations to make their views known to the Commission. At the request of Dan Christmas, the Director of Advisory Services for the Union of Nova Scotia Indians, the Commission also agreed to sponsor a two-day consultation meeting through which Mikmaq views on the proposed seat could be clarified. Dr. Fred Wien from the Maritime School of Social Work, Dalhousie University, was asked to organize the consultation meeting. Financial support was provided by the Commission and by the Department of Indian Affairs. A briefing session to review Mikmaq perspectives on representation and to clarify the issues to be resolved was held with members of the Commission on January 15, 1992.

If there is to be Mikmaq representation in the Nova Scotia Legislative Assembly in accordance with the wishes of the Mikmaq, it was clear that several questions would need to be answered, as follows:

(a) Do the Mikmaq approve of the idea of representation in the Nova Scotia Legislature? What would such representation accomplish?

(b) If so, what about the number of representatives?

(c) Should the representative(s) have voting and other privileges, the same as other members of the Legislative Assembly? Or should the representative(s) have different powers and privileges?

(d) Should the representative(s) belong to political parties?

(e) How should the constituency of the representative(s) be defined?

(f) How should the representative(s) be selected? Who participates in this process, and what are the qualifications required of the candidates? To whom is the representative accountable?

In the course of the discussions on February 6 and 7, 1992, virtually all of these questions were discussed, and the pros and cons of each issue were debated. The invited speakers contributed to the debate by providing background information and, in some cases, by expressing their own points of view.

A brief review of the speakers' comments, and of the debate about the issues, follows.

III. SUMMARY OF REMARKS FROM INVITED SPEAKERS

Following an opening prayer given by Acting Grand Chief Ben Sylliboy, Dr. Ron Landes, the Chair of the Provincial Electoral Boundaries Commission, spoke to the group. He stated that his main task at the conference was to observe and listen to the proceedings, so that the recommendations of the Commission would reflect the wishes of the Mikmaq people. He clarified that the decision to add a seat for the Mikmaq has already been taken by the Government and approved by the Legislative Assembly; there remain only the details to be decided. In his view, there was a choice to be made between having a member of the Legislative Assembly who is just like any other MLA, with the same rights and privileges, or of filling the position with a treaty delegate, along the lines proposed by the Mikmaq Grand Council. If the latter, the Mikmaq would be opting for a model which is close to that implemented by the State of Maine. Here the Penobscot and Passamaquoddy nations each have representatives in the State Legislature who vote in Committee and have

the right to speak but not vote on the floor of the Legislature.

Dr. Landes concluded his remarks by saying the Commission has received a legal opinion questioning whether it is within the constitutional authority of the Provincial Government to legislate for a Mikmaq seat, on the grounds that "Indians and lands reserved for Indians" is an exclusive federal power under the BNA Act. The Commission has also received advice from lawyers representing the Union of Nova Scotia Indians and the Native Council of Nova Scotia challenging the legal opinion received by the Commission. In any event, the Commission has notified the Mikmaq organizations about the constitutional question, but is determined to proceed with recommendations concerning such a seat. If there is a constitutional question to be sorted out, it will need to be done by the Province after the Commission has reported and made a specific proposal.

Arthur Donahoe, a former Speaker of the Legislative Assembly and the MLA for Halifax Citadel since 1978, was the next presenter. He was confident that the recommendations of the Commission regarding a Mikmaq seat, due on March 1, 1992, would be accepted by the Government and could be legislated within a short period of time thereafter. His own view of the situation was that a Mikmaq member of the Assembly should be the same as any other member, representing a geographically defined area of the Province such as the reserves. Any person properly nominated from within those areas should be entitled to run, and they should be partisan candidates nominated by one of the parties, unless a person chooses to run as an independent. The person elected should have the same rights and privileges in the Legislature, including the right to vote and the same salary, as other members (i.e., a basic indemnity of $30,130 plus an added non-taxable expense allowance of $15,065). The Mikmaq representative should also be eligible to become a Cabinet member if selected by the Premier.

Mr. Donahoe also described what is involved in being a member of the Legislative Assembly, in terms of representing those who elected the member, serving in the Legislature in accordance with the rules of the House, and participating in parliamentary debates on the Throne Speech, the Budget, Question Period and specific pieces of legislation. He spoke as well about the Committees of the House, and the length of the sessions of the Legislature. In conclusion, he indicated that he agreed that the

constitutional issue should not delay the process; after hearing from the Mikmaq, the Commission should make the best recommendations possible and he will argue within the Government for proceeding on that basis.

Mary Ellen Turpel was the next speaker. She is of Cree origin from Norway House, Manitoba, and a Professor in the Faculty of Law at Dalhousie University. She is currently serving as a constitutional advisor to the Assembly of First Nations. Prof. Turpel began by saying that the basic question before the gathering was to determine how best to serve the needs of the Mikmaq people. She stressed the fact that the Mikmaq are a people, with rights to self-determination as recognized by the fact that they have valid treaties with other governments. The Mikmaq have not lost their inherent right to self-determination, nor are they to be considered an interest group that is to be given a gift in the form of a seat in the Legislature.

She made the point that a Mikmaq representative cannot meet the needs of the people through the party system. She stated that Elijah Harper's party in Manitoba supported Meech Lake and sold him out on the issue; it was the chiefs who convinced Elijah to say "no" to the agreement and if there had not been widespread popular opposition to Meech Lake, Elijah would have had to toe the party line. Ethel Blondin has had similar problems with the Liberals. In any event, Indian people do not have the time or the money for the party system, or to run as independent candidates.

She complimented the Mikmaq for the strength of their treaties of peace and friendship, and for their success in having the treaties recognized by the Supreme Court of Canada. She felt that the biggest issue now was that of treaty recognition and implementation. There is a need to explain the treaties in the Mikmaq homeland, which extends from Newfoundland, across the Maritimes and into Quebec, and the Mikmaq should take advantage of any opportunity to open up the dialogue by pushing to have Mikmaq representation from all of the districts of the Grand Council in the relevant provincial legislatures. Such representatives would be a positive way of raising issues concerning treaty obligations.

Prof. Turpel raised a concern to be considered by the meeting. In the Supreme Court decision on the Sparrow case, it was determined that

aboriginal rights, such as the right to fish and hunt, should not be unreasonably restricted by government. The test whether such a right has been unreasonably restricted is, in part, whether the measure imposes undue hardship on the people affected and whether there has been consultation with them. Will the existence of a Mikmaq representative in the Legislature be taken to mean that consultation has taken place over measures that may affect aboriginal and treaty rights? She urged the meeting to be careful about the issue, and to spell out clearly what kind of consultation would be required through the Mikmaq political leadership when it came to matters of aboriginal and treaty rights.

Prof. Turpel spoke briefly about the representation of aboriginal people in other jurisdictions, such as in New Zealand with the Maori and the arrangements for aboriginal parliaments in Norway and Finland. With regard to the State of Maine, she noted that the tradition of aboriginal representation in legislatures goes back to the long history of relations between colonial legislators in Massachusetts and treaty representatives from the Indian nations who would speak about treaty rights. When Maine became a separate state, splitting off from Massachusetts, the tradition was continued. She noted that, with this kind of arrangement, it is wise not to be unrealistic about what one or two aboriginal representatives can do in the Legislature, since they do not have the power to control budgets or legislation. There is also a problem of inadequate funds and staff for the two representatives in Maine in view of the wider geographic base for their constituencies, and the range of issues with which they need to deal.

In conclusion, she pointed out that there are no models out there that are specifically tailored to the needs of the Mikmaq. All existing examples have problems, and the best that can be done is to learn from them. The Mikmaq will need to tailor their representation to meet their own needs.

Alex Denny began his presentation by recalling the steps that had been taken in order to establish the validity of the Mikmaq treaties. He mentioned taking available scraps of documents describing the treaties to a lawyer in Sydney, who concluded that the treaties were not worth the paper they were written on. Subsequently, the Executive and staff of the Union of Nova Scotia Indians and the Grand Council devoted many hours to establishing the legitimacy of the treaties, and it was not until 1985 that a definitive pronouncement came from the Supreme Court on the matter.

In suggesting the idea of a treaty delegate in the Nova Scotia Legislature, the Grand Council had in mind preventing the occurrence of another Oka confrontation by having a voice in the Legislature to protect Mikmaq rights. Mr. Denny is afraid on a daily basis that he will pick up the newspaper and read that a Mikmaq person has been charged and that a court has overturned existing treaty obligations and rights. The Grand Council recognizes that under the constitution, the Province gave up responsibility for Indian people in 1867. Thus the idea is not to have a legislator who would become part of the Province's government, but rather someone who would help to control what the Province does to Mikmaq people. Such a treaty delegate could speak to subjects such as the leasing of Crown lands to the pulp and paper companies; the right of the Mikmaq to equalization monies from the federal government; and the right of the Mikmaq to run their own affairs in areas such as education and social services.

In his view, the treaty delegate should not be partisan in the sense of belonging to a political party. The Mikmaq can, under existing arrangements, run as partisan candidates if they choose to do so.

He would be content to begin with one representative in the Legislature, a person who would be in close contact with the reserve communities on the issues that need to be raised. If most of the Mikmaq people are behind the person, he/she will be able to start something, as their forefathers did in the 1700's. The issues surrounding the seat may not be decided today or tomorrow, since it is a new idea with many uncertainties, but he has confidence in the creativity of the Mikmaq people to come to an agreement on a model that best suits their needs.

Elijah Harper was the speaker at dinner on Thursday evening. He began by speaking about his traditional upbringing in Northern Manitoba, and his education in residential school, high school and university. He indicated that, since his election to the Manitoba Legislature in 1981, he has been criticized for involving himself in a non-aboriginal institution. However, he believes it is important to do what you think is right, and not to depend on others for your freedom. He indicated that the experience of serving as an MLA has often been a lonely one, with no course of instruction available to him on the workings of the Legislature, and no other aboriginal colleagues to share the load in committees or on the floor

of the House. There were problems even when his party formed the government of the Province and he was a cabinet minister for Northern and Native Affairs.

He stated that it was up to the Mikmaq, and not to a visitor from another region, to decide on the objectives that could be achieved by representation in the Nova Scotia Legislature. However, he did raise some questions to think about. For example, he suggested that a treaty deputy would be a lone voice in the Legislature. How would he/she function? Would the delegate have an office, staff, and sufficient resources? If speaking on a bill, would he/she have the same privileges as other members? If not voting and if non-partisan, what powers and tools would the delegate have? Who would second the delegate's motions? If he were non-voting in the Manitoba Legislature, the Meech Lake agreement would have passed. How can a non-voting delegate be held accountable to his/her constituency? Will the Province use this offer of a seat as a gift to end all further discussion? Or should the Province and the federal government recognize aboriginal governments and allow them room to make laws in matters of concurrent jurisdiction? Indian nations in Canada should be negotiating the inherent right to self-government on the basis of their treaties and having that right recognized within the Canadian constitution.

In conclusion, Mr. Harper noted a standard similar to the one mentioned by Prof. Turpel. Will the Mikmaq seat preserve and protect the interests of all Mikmaq people? The responsibility for the decision lies with the people at this conference, who need to follow their hearts and listen to the people, including the elders.

IV. SUMMARY OF DISCUSSIONS IN PLENARY SESSIONS

It seemed that a majority of persons attending the conference were in favour of some form of Mikmaq representation in the Legislature. A few persons spoke against the idea, however, and others attached conditions to their support for the concept and urged the community to proceed with caution. Among the reasons given for opposing representation was the idea that the Mikmaq should not be involved with or in any way implicated in the government of the Province because this might compromise the sovereignty of the Mikmaq (implying that the Mikmaq come under the jurisdiction of the Province) and because the primary relationship of the

Mikmaq is with the federal government. One speaker suggested that the provincial boundary does not correspond to the boundary of a nation, nor does it correspond to the geography of the Mikmaq nation. He suggested as an alternative the formation of a Mikmaq directorate or secretariat that would intervene with all levels of government on behalf of the Mikmaq nation.

Other speakers placed the quest for Mikmaq self-determination and the recognition of the treaties as the first priority, raising the question of how the Mikmaq wish to be represented as a nation. It was suggested, for example, that the Nova Scotia government should first recognize Mikmaq sovereignty, following which there could be an exchange of representatives between the two governments. Along the same lines, it was also suggested that the right to self-government and the recognition of treaties should be entrenched in the constitution first, before proceeding with the representative in the Legislature. If this were done, the Mikmaq would be able to sit down with other governments on an equal basis, perhaps through the Grand Council, and this would be more valuable than a token representative in the Legislature which might diminish the relationship. Mr. Donahoe responded to this by saying that a person in the Legislature could put the concerns about the treaties and self-government forward on the floor of the Assembly; this would serve to upgrade the relationship and would help to address legitimate grievances over past treatment.

Several persons stated clearly that they do not agree with the kind of seat mentioned by Premier Cameron, that is, an MLA like the others who belongs to one of the political parties. If there is to be representation, the Mikmaq delegate should be different from the other MLA's, an ambassador from the Mikmaq nation and separate from the other MLA's, like the Speaker of the Assembly. Nor do they want an affirmative action seat, a brown face in the Legislature. It was noted that the Mikmaq promised through the treaties that they would not interfere with European governments, and vice versa, and the Mikmaq should be careful not to violate this principle. The treaty delegate idea is a way to approach this issue, but we should not rush into it, rather it should be part of the discussions over self-government and how this right is to be exercised. The process of self-government will be slow and deliberate, and the form it takes will be different from earlier times.

Other speakers agreed that the Mikmaq community should proceed carefully on the matter, and while there are some doubts as to what might happen in the future, fear should not be a deterrent to proceeding. A self-determining Mikmaq community should decide what the representative's responsibilities should be, and should make clear that anything that affects the nation is up to the nation to decide, not one or two members in the Legislature. It was pointed out that what is decided today can be changed later on; today we want only a treaty delegate, but once self-government and other negotiations are completed, we can revise the arrangement, perhaps add more than one representative, and so on.

Several persons spoke unequivocally in support of representation, and there was considerable agreement about the role to be performed by the representative(s). It was noted that existing parties are not meeting the needs of the Mikmaq in the Legislature because of their unwillingness to raise issues that are important to the aboriginal community, such as the entitlement of the Mikmaq to a share of transfer payments from Ottawa. Mikmaq representatives should act as protectors of Mikmaq aboriginal and treaty rights, and should protect the right of the Mikmaq to self-government. The position would also be useful in providing an educational forum for the aboriginal community in the Province, and as a source of information about the workings of government.

There was also considerable debate about the number of representatives for the Mikmaq in the Legislature. Arthur Donahoe explained the reasoning that led his Committee to recommend one seat, with this decision based on the number of Mikmaq in Nova Scotia, a number that was found to be roughly equivalent to the size of existing constituencies. Several Mikmaq argued for more than one representative, suggesting that the diversity of the Mikmaq community made this desirable. Others pointed to the imbalance that would exist in the Legislature if there were only one aboriginal person facing 52 other MLA's. It was also recognized, however, that it was not necessary or desirable to have representatives for each Mikmaq faction or organization in the Province, and that a representative should be chosen who is the best person available to represent the nation as a whole. It was also noted that one could begin with one representative or delegate, but keep the door open for additional members later on. In any event, the Chairman of the Commission, Dr. Landes, indicated that the terms of reference of the

Commission is specific about one representative at this time. The Commission could make recommendations regarding one seat and then advocate for more than one as part of the Commission's report.

The question of the voting and other powers that an aboriginal member would have was also debated, and no consensus was reached. The point was made several times that a member of the Legislature without a vote would be weak and ineffectual, a token member of the Assembly. Others argued that, apart from the question of a vote, the member should have special powers, for example the right to veto legislation that impinges on Mikmaq rights or interests or the right to be automatically included in the Cabinet of the Government of the day. It was recognized, too, that an aboriginal member of the Legislature would have an enormous constituency to cover, and would need to be current on a wide range of issues. Thus there is an argument to be made for extra staff and for travel and other expenses that go beyond that received by the ordinary MLA.

The tendency in the debate on voting rights was for those who favour the treaty delegate position to argue that the member should not have the vote, and those that favoured an MLA like the others wanted the right to vote on legislation included in the package. However, at times a person favouring the treaty delegate position would argue that the member should be non-partisan but should have voting privileges, or should have voting rights in committees of the Legislature if not on the floor of the House, as is the case in the State of Maine.

There was not a great deal of debate about whether the member should belong to a political party or not; again those not favouring the treaty delegate idea would be more open to partisan politics, but no one spoke strongly in favour of this and several people stated that they were opposed to having a partisan member.

There was more debate about how the member(s) should be selected. Some favoured a system of appointment, usually by the Grand Council or through a process organized by the Grand Council, to whom the member would then be responsible. The first appointment might be made in Nova Scotia, and subsequently in the other Atlantic Provinces and in Quebec. The appointment approach was felt to be consistent with the treaty delegate idea, and reflected distrust of popular election methods which

were felt to be the white man's way. In these arguments, the Grand Council was recognized to be the keeper of Mikmaq constitutional documents, and the protector of aboriginal and treaty rights, over a long period of time. Others disagreed with this approach, arguing that this leaves the chiefs and band councils out of the process and these are the legitimately established and recognized governments of the First Nations communities as established by the Indian Act. If the matter of Mikmaq representation is to be turned over to the Grand Council, the chiefs and band councils of the province would need to be consulted and they would need to give their approval for the transfer of authority. Critics of the Grand Council argued that the latter needed to get its own house in order, and needed to explain its membership selection procedures to the Mikmaq people. They wanted clarification who the Grand Council represents, and what its contemporary role should be. Critics of the "Indian Act chiefs and band councils" for their part argued that it was not only the Grand Council that had some questions to answer. One speaker pointed out that the Mikmaq community cannot expect to have one or more representatives in the Legislature so long as there is no agreement on who is an Indian, and so long as it is impossible to have the 13 chiefs meet as one.

Whether the representative(s) are elected or appointed, there did seem to be agreement that the representative(s) could not act in isolation from nor independently of the wider Mikmaq political and traditional leadership. One suggestion was that, on most matters arising in the Legislature, the delegate(s) would need to consult with the chiefs before taking positions or actions in the Assembly. If a proposed measure were to have an impact on Mikmaq aboriginal and treaty rights, however, the Grand Council would need to be consulted and the Lieutenant Governor might be asked not to sign such a measure if there were to be a negative impact.

The issue of election or appointment also has a bearing on the definition of the constituency to be served by the representative(s). If members are elected, then there would be accountability to the voters in the Mikmaq district, and the latter would need to be defined in terms of its geography and the characteristics of who could vote. Several speakers urged that such a constituency go beyond the bounds of the reserves to include those living off-reserve (e.g., all those on the band lists of a particular band) who need to be involved as part of a unified process. It was noted that many Mikmaq people live off reserve, and often not because they choose to

do so -- reserve housing may not be available, for example, or there may be financial or family reasons for living off reserve. If, on the other hand, the representative(s) are to be appointed by a particular group such as the Grand Council, then it is perhaps not as crucial to define the boundaries and membership of the Mikmaq nation.

V. CONCLUSION

As the conference drew to a conclusion, it was clear that those attending had had a good opportunity to discuss the issues regarding representation in the Nova Scotia Legislative Assembly, and that there was considerable interest in pursuing the idea. There was also considerable agreement on the purpose that would be accomplished from a Mikmaq perspective in having such representation. However, it was clear that there was insufficient time to develop a consensus on the wisdom of proceeding and on the shape of several of the key "design" questions, such as the method of selection and the voting status of the representative(s). Several speakers stressed the importance of speaking with a united voice on the matter, even if it meant missing the deadline of March 1, 1992, the date by which the Electoral Boundaries Commission needs to submit its report. It was noted that the Mikmaq have waited since the establishment of the Nova Scotia Legislature for appropriate recognition of their standing and rights in the province, so waiting a few more months will not be critical.

The point was also made several times that the next step is to take the information from this conference back to the communities for further discussions. The people in the communities need to be informed about the issues at stake, and have the opportunity to be involved in the process; there needs to be a discussion of how the proposed seat would benefit the people of each Mikmaq community. It is not appropriate for conferences such as this to make arbitrary decisions. Thus a series of community meetings was recommended, to be followed perhaps by another large conference, one that also involves young people and elders as well, much like the Liscombe Lodge conference did a decade ago. In the interim, the Grand Council will be making its decision to name a replacement for Donald Marshall Sr. before the end of July, and it is appropriate to wait at least until then before coming to a final conclusion on the matter.

In his concluding remarks, Alex Denny agreed that it was wise to take additional time to decide the issue. He said that the Grand Council did not expect a rapid conclusion to the debate when it raised the idea of a treaty delegate a few months ago. There is enough about the proposal to be leery about, and the correct role of the chiefs and the Grand Council in the process is not yet clear -- both have limitations. In his view, half the vision has already been accomplished, in that chiefs, band councillors, and executive members of organizations have come together and have spoken on an important issue. In the process, some of the problems with different ways of proceeding have been clarified, so there is now a good information base for carrying on the discussion at the community level. He urged that the discussions proceed, however, and that the Mikmaq not wait another 500 years before they are properly represented in the Legislature of the Province.

A motion was then passed authorizing the Co-Chairs of the Conference to prepare a report of the proceedings and asking that a draft be circulated to those attending before it is finally submitted to the Provincial Electoral Boundaries Commission.

PERSONS ATTENDING THE ELECTORAL BOUNDARIES COMMISSION CONSULTATION MEETING FEBRUARY 6, 7, 1992, TRURO, N.S.

Acadia Band
Chief D. Deborah Robinson
William P. Labrador
Deborah Wentzell
Steven Francis

Afton Band
Judy Julian
Darlene Prosper

Annapolis Valley Band
Chief Lawrence Toney Jr.
Murray Copage
Ricky Toney

Chapel Island Band
Noel Doucette
Michael Basque
Russell Marshall

Eskasoni Band
Chief Leonard Paul
Marion Denny
Noel J. Simon
Allan Jeddore
Cyril M. Cremo
Peter J. Paul

Whycocomagh Band
Raymond Googoo
Ryan C. Googoo
Alan Bernard
John Prosper

Horton Band
Chief Joseph Peters
Shirley Clarke

Membertou Band
Chief Terrance Paul
Stephen A. Gould
John G. Paul

Millbrook Band
Barry Martin
Lloyd Johnson
Clara Gloade
Dwight Dorey
Matilda Bernard

Shubenacadie Band
Chief Reginald Maloney
Gordon Howe
Peter Julian
Thomas Maloney
Jerry F. Sack
Jerry M. Sack
Rufus Copage
Earl Sack
Sandra Maloney
Russell Julian
Deborah Maloney
Thomas Howe

PERSONS ATTENDING (continued)

Pictou Landing Band
Ken Francis

Wagmatcook Band
Chief Francis Pierro

Native Council of Nova Scotia
Tim Martin
Ellen Robinson
Darliea Slauenwhite
Frank Jesty
Rose Purdy
Genevieve Lowe
Timothy Dorey
Shirley Mills
Susan Stockman

Native Women's Association
Sara Fiddes
Joan Marshall
Grace Francis

Union of Nova Scotia Indians
Professor Bruce Wildsmith

Grand Council
Acting Grand Chief Ben Sylliboy
Grand Captain Alex Denny

Others Attending
Viola Robinson
Doreen Knockwood
Junior Bernard
Ken Martin
Ben Martin
Brian Knockwood
Scott Taylor
Peter Bernard
Donna Gloade
Linda Paul
Rick Simon
Albert Julian
Jean Martin
Catherine Sorbey
Spencer Wilmot
Cecilia Phillips
Karen Bernard
Frank Nevin
Michelle MacDonald
Alan Clarke
Bruce Clarke
Fred Wien
Rose Marie Nevin
Vincent Phillips
Robin Cape
Alex Cape
Noel Knockwood

Invited Speakers
Ben Sylliboy
Ronald Landes
Arthur Donahoe
Mary Ellen Turpel
Alex Denny
Elijah Harper

APPENDIX E

MARITIME SCHOOL OF SOCIAL WORK, DALHOUSIE UNIVERSITY

HALIFAX, NOVA SCOTIA, B3H 3J5

February 22, 1992

Dr. Ron Landes
Chair, Provincial Electoral Boundaries Commission
P.O. Box 276
Halifax, Nova Scotia, B3J 2N7

Dear Dr. Landes:

Some months ago, you asked me to organize, on behalf of the Commission, a consultation meeting with leaders of the Mikmaq community to ascertain their views on Mikmaq representation in the Nova Scotia House of Assembly. This meeting has now been held, and a full report summarizing the proceedings is enclosed.

I think the Truro conference was an important step ahead in the debate on representation in the Legislature. The Commission is to be commended for recognizing the need for such a conference and for providing the financial and staff support necessary to make it happen. Several things were accomplished:

(a) the fact that there was attendance on the part of chiefs, band councillors, and executive members of virtually all Mikmaq bands and political organizations is clear evidence of widespread interest in the Mikmaq community in the representation issue. I think most of those attending favoured the idea of a Mikmaq presence in the House of Assembly, and there was also widespread agreement on the purposes that could be served.

(b) The conference provided a means of sharing information about the issues surrounding representation in the Legislature; in this respect, the invited speakers were particularly helpful.

(c) Those attending had a good opportunity to debate the pros and cons of representation, and the particular form that it might take. While a number of issues were left unresolved, there was a strong thrust at the meeting in favour of building a unified Mikmaq response.

The report of the conference makes clear that there is a widespread sentiment that more time is needed to discuss and resolve the issues, and to achieve consensus. It is not only a matter of making certain administrative decisions; rather, what is at stake has to do with representation in the context of Mikmaq aboriginal and treaty rights, with determining the best form of representation of the Mikmaq people, and with serving the needs and protecting the rights of present and future generations.

The point was made a number of times that the matter of representation has to be taken back to the people in the communities. They need to be informed about the issues, and be given an opportunity to have their views heard. Once this process has been completed, there is support for organizing a larger conference again that would include a cross-section of the Mikmaq community, including the youth and the elders.

The support of the Commission, the Nova Scotia Government and the three party leaders is required to leave the door open for Mikmaq representation in the House of Assembly, and to support the continuation of the consultation process as outlined at the Truro conference. For this process to come to a successful conclusion, it is important that appropriate financial support be provided by the Nova Scotia Government.

It is useful as well to be clear on what mechanism can be used to continue the dialogue with the Province on this important issue, in the period after the Commission completes its work. In this connection, I draw to your attention the mechanism being developed to pursue discussions about treaty rights and self-government in the constitution. I understand that the establishment of a working committee has been recommended to the Premier, to be composed of representatives of the major Mikmaq political organizations as well as representatives of the three party leaders. I suggest that the issue of Mikmaq representation in the Legislature would fit in well with the agenda items being discussed by the proposed working committee, which is likely to carry on well beyond the time frame of the current constitutional negotiations.

In conclusion, I would like to express my appreciation to you, to Eve Wickwire, and to Loretta Bell for the excellent work you have done to contribute to the consultation meeting.

Yours sincerely,

Fred Wien

Fred Wien